

REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS TO ROLL-OUT AND OPERATE A NATIONAL
BROADBAND NETWORK FOR AUSTRALIA

REQUEST FOR PROPOSALS NUMBER: DCON/08/18

Department of Broadband, Communications and the Digital Economy

Friday, 11 April 2008

CONTENTS

Part 1.	Overview	1
1.	Overview	1
1.1.	Background	1
1.2.	Request for Proposal Process	3
1.3.	Commonwealth's objectives for the NBN	5
1.4.	Evaluation criteria	6
1.5.	Discussion of the Evaluation criteria	7
Part 2.	Conditions For Proposal	16
2.	Invitation	16
2.1.	Invitation to submit Proposal	16
2.2.	Key terms	16
3.	Obtaining RFP documentation	17
3.1.	AusTender, the Australian Government Tender system	17
3.2.	Notices	18
3.3.	AusTender help desk	18
4.	Lodging Proposals	19
4.1.	Lodgment of Proposal and Proposal Closing Time	19
4.2.	Documents to be lodged	19
4.3.	Late lodgment policy	20
5.	Additional information and variations to the RFP documentation	20
5.1.	Requests for Additional Information	20
5.2.	Variation of the RFP	20
5.3.	Termination of the RFP	21
5.4.	Errors in and alterations to Proposals	21
6.	Information management	21
6.1.	The Commonwealth's Confidential Information	21
6.2.	Network Information	21
6.3.	Proponent's Confidential Information	22
6.4.	Use of Proposal documents	23
7.	Policy and law	24
7.1.	Ethical dealing	24
7.2.	Conflicts of interest	24
7.3.	Application of law and Commonwealth policy	25

7.4.	Australia's Foreign Investment Policy	26
8.	Proposal response requirements	27
8.1.	Pre-Qualification Requirements – Bond/Confidentiality Deed	27
8.2.	Proposal response requirements	28
8.3.	Assumptions and supporting information	28
8.4.	Proponents to inform themselves	29
8.5.	Disclaimer	30
8.6.	Offers and acceptance of offer	31
8.7.	Probity Adviser	31
9.	General matters	31
9.1.	Funds and units	31
9.2.	Joint Proposals	32
9.3.	Part Proposals	32
9.4.	Commonwealth's right to ask Proponents to revise National Proposals	33
9.5.	Subcontractors	33
10.	Evaluation of Proposals	33
10.1.	Evaluation process	33
10.2.	Panel of Experts	34
10.3.	Evaluation criteria	35
10.4.	Role of the ACCC	36
10.5.	Role of other Commonwealth agencies and specialist advisers	37
10.6.	Submissions on Regulatory Issues	37
10.7.	Security, probity and other checks	38
10.8.	Minimum Content and Format Requirements	38
10.9.	Conditions for participation	39
10.10.	Clarification, short-listing and negotiations	39
11.	Other Matters	39
11.1.	Public Statements	39
11.2.	Additional Rights of the Commonwealth	40
11.3.	Publication of contract award	41
11.4.	Debriefing	41
11.5.	Complaints	41
	Schedule 1 - Proponent's Declaration	
	Schedule 2 - Schedule of required information	

PART 1. OVERVIEW

1. Overview

1.1. Background

- 1.1.1. Australia's core economic challenge is to build long-term, sustainable prosperity and the foundations for it.
- 1.1.2. Our future prosperity will be bound to the growth of the digital economy. Broadband will be crucial to business productivity, access to services and information, and to the way all Australians live. Broadband underpins the applications that businesses, our education and health institutions and consumers either require now, or will require into the future.
- 1.1.3. Businesses are revolutionising their systems and processes; schools and universities are using the Internet for education and research; and doctors and hospitals are diagnosing patients remotely. Consumers are watching Internet Protocol TV (IPTV), downloading podcasts and vodcasts, updating software, playing online games, transferring files and enjoying cheap phone calls through Voice over Internet Protocol (VOIP).
- 1.1.4. In Australia today, there is a range of high-speed broadband services available including those provided over high-speed hybrid fibre coax (HFC) cable and Digital Subscriber Line technology (for example, ADSL and ADSL2+). However, these services are limited in reach, serving predominantly metropolitan areas. Even in cities there are many people who currently cannot get ADSL, let alone ADSL2+.
- 1.1.5. The situation in Australia is not unique. Carriers and, in some cases, governments are working to roll-out high-speed broadband networks in other countries. In the USA, Canada, Singapore, Japan, Korea, New Zealand, Germany and France, new fibre-to-the-node (**FTTN**) or fibre-to-the-premises (**FTTP**) networks are being planned or rolled out. The countries that roll-out these networks will be better placed to seize the economic and social opportunities that high-speed broadband enables.
- 1.1.6. The Australian Government will not let Australia be left standing while the rest of the world races ahead. That is why the Government will build a National Broadband Network (**NBN**), in partnership with the private sector, which will deliver a dedicated downlink transmission speed of at least 12 Megabits per second (Mbps) over each connection provided to a premises, using FTTN or FTTP architecture, and that will be available to 98 per cent of Australian homes and businesses.
- 1.1.7. Before the 2007 election the Australian Labor Party (**ALP**) issued its policy statement *New Directions for Communications. A Broadband Future for*

Australia – Building a National Broadband Network. In this policy the ALP committed, if elected, to provide funding of up to \$4.7 billion and to consider regulatory changes necessary to facilitate the deployment, over five years, of the NBN. This Request for Proposals (**RFP**) gives effect to this policy commitment.

- 1.1.8. The NBN is a critical element of the Government's national infrastructure agenda, particularly given the importance of the digital economy. Not only will the NBN provide the primary platform for delivering fixed high-speed broadband services, but it is also likely to provide the platform for basic services like voice as well as many other new and innovative services for decades to come. The economic and social implications of the NBN are therefore profound.
- 1.1.9. As the NBN will be a vital communications platform for the future, the Government is determined to ensure that the long-term interests of end-users continue to be promoted as well as the efficiency and international competitiveness of the Australian telecommunications industry. As such, it will be important that appropriate open access arrangements are in place.
- 1.1.10. Proponents should submit arrangements for open access to their networks, including measures or models to ensure equivalence of access prices and non-price terms and conditions, and arrangements for allowing access seekers to differentiate their service offerings to customers.
- 1.1.11. Given the central role the infrastructure will play in Australia's communications sector, the Government sees the NBN as being a platform for future network upgrades. Accordingly, Proponents should demonstrate a clear upgrade path for the network to meet future consumer demand and service developments to at least 2020 and preferably beyond.
- 1.1.12. The Government has indicated it will make a funding contribution of up to \$4.7 billion to establish the NBN. This contribution may take the form of debt or equity which would be required to earn a return. While the Government has previously indicated its preference for an equity investment, other forms of funding will also be considered.
- 1.1.13. The Government is committed to holding an open competitive assessment process to consider Proposals to roll-out and operate the NBN. The Government has appointed a Panel of Experts (**Panel**) to assess proposals and provide a report to the Government.
- 1.1.14. The Australian Competition and Consumer Commission (**ACCC**) will provide ongoing advice to the Panel on pricing and competition issues, and will provide a written report to the Panel.

- 1.1.15. The Attorney-General's Department will coordinate an assessment of the national security implications of Proposals in consultation with national security and law enforcement agencies to be provided to the Government to inform the assessment process.
- 1.1.16. At the same time as this RFP is released, the Government is inviting, in a separate process, industry and public interest groups to provide submissions to the Government on regulatory issues, including consumer safeguards, relevant to the outcome of the NBN process. The closing date for these submissions is one month prior to the Closing Time for Proposals for this RFP. These submissions will be available to Proponents so that they may have regard to them in preparing their Proposals. The Commonwealth reserves the right to publish the submissions but may choose not to publish submissions or parts of submissions where it considers it appropriate to do so for confidentiality or other reasons. The Panel will be able to consider submissions (whether published or not) in making its recommendation to the Government on the NBN. The submissions will also provide a general resource for the Government in relation to the development of future communications policy and regulation.
- 1.1.17. At the same time as this RFP is released, the Government is also separately inviting Proponents, industry, public interest groups and other stakeholders to make submissions on policy and funding initiatives to provide affordable access to broadband services to remote areas that may be outside the NBN coverage area. This could include strategies to enhance the Australian Broadband Guarantee (**ABG**) program to achieve outcomes comparable to the NBN. In this regard it should be noted that funding for the ABG has been extended for the 2008–09 financial year. The Government encourages Proponents who have plans for providing services to the remaining two per cent of premises to make submissions to the parallel process. It should be clearly understood that any such submissions do not form part of this RFP process.
- 1.1.18. Prior to the 2007 election, the ALP also committed to the \$100 million Fibre Connections to Schools initiative. This initiative is a separate process and is the responsibility of the Minister for Education, who has commenced an audit of schools' fibre requirements. The Government expects Proponents' Proposals for the NBN project to be compatible with the Fibre Connections to Schools initiative.

1.2. Request for Proposal Process

- 1.2.1. This RFP is issued by and on behalf of the Commonwealth by the Department of Broadband, Communications and the Digital Economy ('the **Department**').

1.2.2. As set out in section 1.2.3 of this RFP, it is anticipated that a final Government decision will be made in 2008.

1.2.3. The table below outlines the planned schedule. The schedule is indicative only and may be subject to change at the Commonwealth's discretion:

Milestone	Date
RFP issued Submissions invited on regulation and the Australian Broadband Guarantee	11 April 2008
Closing date for bond and confidentiality deed	23 May 2008
Bilateral meetings with Proponents	May-June 2008
Proponent access to Network Information	May-June 2008
Regulatory submissions available	30 June 2008
Closing date for clarification questions	18 July 2008
Closing Time for Proposals	25 July 2008
Assessment	August-September 2008
Identification of preferred Proponent(s) by Panel	September 2008
Negotiations	September-October 2008
Government decision	October 2008

1.2.4. The Commonwealth or the Panel may (in their absolute discretion) hold bilateral meetings with Proponents to:

1. obtain information in relation to, and clarify aspects of, the proposed Proposal;
2. explain the intention of, and answer questions about, any aspect of the RFP; and
3. raise or address any other issues which the Commonwealth or the Panel may (in their absolute discretion) identify or elect to address.

1.2.5. Any bilateral meeting will be conducted in accordance with protocols issued prior to the bilateral meeting, and will be subject to oversight by the probity adviser.

1.2.6. In any bilateral meeting, the Commonwealth or the Panel:

1. may raise issues with a Proponent which they do not raise with other Proponents;
2. may provide any relevant information arising from a bilateral meeting with one Proponent to other Proponents on a non-attributable basis;

3. are not obliged to provide any information or explanation, answer any questions or otherwise act in any particular manner in or arising out of or in connection with any bilateral meeting; and
4. are not obliged to amend the RFP or otherwise issue any addenda arising out of or in connection with any bilateral meeting.

1.3. Commonwealth's objectives for the NBN

1.3.1. The evaluation criteria in clause 10.3 include the extent to which the Proposal meets the Commonwealth's objectives for the NBN project. The Commonwealth's objectives for the NBN project are to establish a national broadband network that:

1. covers 98 per cent of Australian homes and businesses;
2. is able to offer broadband services with a minimum 12 Mbps dedicated downlink transmission speed over each connection provided to a premises;
3. supports symmetric applications such as high-definition video-conferencing;
4. is able to support high quality voice, data and video services;
5. uses fibre-to-the-node or fibre-to-the-premises network architecture;
6. enables uniform retail prices on a national basis;
7. is rolled out and made operational progressively over five years from the date of execution of a contract between the Commonwealth and successful Proponent;
8. continues to promote the long-term interests of end-users;
9. has sufficient capacity to meet current and foreseeable demand and has a specified upgrade path within clear timeframes, consistent with international trends;
10. facilitates competition through open access arrangements that ensure equivalence of price and non-price terms and conditions, and provide scope for access seekers to differentiate their product offerings;
11. enables low access prices that reflect underlying costs while allowing Proponents to earn a rate of return on their investment commensurate with the risk of the project;

12. provides benefits to consumers by providing choice to run applications, use services and connect devices at affordable prices;
13. provides the Commonwealth with a return on its investment of up to \$4.7 billion;
14. is compatible with the Government's related Fibre Connections to Schools initiative;
15. meets Government requirements for the protection of Australia's critical infrastructure;
16. is consistent with national security, e-security and e-safety policy objectives including compliance with laws relating to law enforcement assistance and emergency call services;
17. is consistent with Australia's international obligations; and
18. facilitates opportunities for Australian and New Zealand small and medium enterprises (SMEs) to provide goods and services to the project.

1.4 Evaluation criteria

1.4.1 The evaluation process is outlined at section 10 of this RFP. Within the framework of an overarching value-for-money assessment, the evaluation criteria against which Proposals will be assessed are:

1. the extent to which the Proposal meets the Commonwealth's objectives for the NBN project (as set out in clause 1.3);
2. the capacity of the Proponent to roll-out, maintain, upgrade and operate the network;
3. the nature, scope and impact of any legislative and/or regulatory changes that are necessary to facilitate the Proposal;
4. the cost to the Commonwealth of the Proposal;
5. the acceptability to the Commonwealth of the contract terms and conditions proposed by the Proponent and the extent to which the Proposal departs from the Commonwealth's notified commercial terms (if any); and
6. the extent of the Proponent's compliance with the RFP.

- 1.4.2 The criteria are not listed in order of importance. Subject to clauses 10.4 to 10.9, the Panel will evaluate each Proposal against each of these criteria and then undertake a comparative assessment of all Proposals in order to make a recommendation to the Minister for Broadband, Communications and the Digital Economy ('the **Minister**') as to which Proposal(s) offer the best overall value for money to the Commonwealth. The Minister, following consultation with Cabinet, will be the final decision maker.

1.5 Discussion of the Evaluation criteria

- 1.5.1 Proponents should consult Schedule 2 for detailed instructions on the information they should provide in relation to the evaluation criteria. This section provides guidance for Proponents on each of the evaluation criteria and on the Commonwealth's requirements for Proposals.

The extent to which the Proposal meets the Commonwealth's objectives for the NBN project

Network specifications

- 1.5.2 The NBN should deliver a minimum dedicated downlink speed of 12 Mbps. This speed should be achievable for each connection provided by the NBN to a premises.
- 1.5.3 The NBN should support symmetric applications such as high-definition video-conferencing.
- 1.5.4 Proponents should also demonstrate that their Proposals will cover 98 per cent of homes and businesses. This figure is to be taken as the national aggregate of homes and businesses at the end of the roll-out period. In assessing the information Proponents provide under Schedule 2 on network coverage, the total number of homes and businesses that will be able to receive services over the NBN will be compared against the total number of Australian homes and businesses. This assessment will be made on the basis of the information requested in Schedule 2.
- 1.5.5 The Government expects that 98 per cent coverage will be met within five years of contract award. The Government expects services to be offered progressively as the network is rolled out. Proponents should indicate the extent to which Proposals are able to prioritise areas that cannot currently access minimum speeds of 12 Mbps.
- 1.5.6 The network coverage described in clause 1.5.4 should then be maintained for the life of the project agreement. Progress should be reported on a quarterly basis. Proponents should specify their proposed reporting arrangements.

- 1.5.7 As requested in Schedule 2, Proponents should indicate the extent to which existing infrastructure they currently own is already capable of delivering minimum speeds of 12 Mbps for dedicated downlink transmissions for each connection, the extent to which that infrastructure is to be incorporated into the NBN, and how this is linked to the proposed roll-out schedule and funding arrangements.
- 1.5.8 The minimum speeds envisaged should require the NBN to be rolled out using FTTN and/or FTTP network architecture.
- 1.5.9 Proponents should specify the upgrade path for the NBN. The Government notes that a number of next generation network roll-outs are taking place around the world, including proposed FTTN and FTTP networks. The Government's expectation is that Proponents will set out how the NBN would provide a basis for delivering even higher bandwidth speeds to customers, in line with international trends.

Services

- 1.5.10 Proponents should specify the services they intend to offer. Consistent with the network covering homes, businesses and other users, the Government is interested in both residential and business services. The network should be able to support a full range of services and applications that can be facilitated by greater access to high-speed broadband, including multicast, virtual private networks, high-definition video-conferencing, peer to peer content delivery and IPTV, as well as basic services such as telephony and other services such as smart meters.
- 1.5.11 The Government considers that consumers and businesses should be able to purchase key entry level voice and broadband services for the same price, irrespective of where they live or work. The NBN should enable uniform prices for basic entry level services. Proponents should provide the relevant pricing details for these services in their responses to Schedule 2.
- 1.5.12 Proponents should outline how consumers will be able to run applications, use services and connect devices at affordable prices. Proponents should outline the type of retail services that could be offered, for both business and residential consumers. The Commonwealth expects that consumers will enjoy affordable retail prices for NBN services, but also notes that services need to be priced so they are economically viable.
- 1.5.13 The Government will need to be assured that existing retail customers will experience no or minimal disruption to their services, and also that the migration of wholesale customers will not be subject to anti-competitive delays or processing timetables. Proponents should ensure that equivalent

(or superior) services to those that are currently available can be offered to all existing customers.

Competition and open access

- 1.5.14 As noted above, the NBN will be a central platform for the Australian communications sector. The Government considers that the long-term interests of end-users should continue to be promoted. The Government is therefore determined to ensure that appropriate open access arrangements are in place to promote competition and ensure efficient investment. In this context it will be important to ensure that access is provided on equivalent price and non-price terms and conditions.
- 1.5.15 Proponents should clearly specify the wholesale access services they are proposing to offer in accordance with the details requested in Schedule 2. For example, Proponents should include details such as the proposed locations of Points of Interconnection, technical arrangements for service providers that acquire wholesale services and (where relevant) the availability of backhaul capacity to and from Points of Interconnection. In setting out these details, Proponents should keep in mind the Government's objective of providing scope for access seekers to differentiate their product offerings.
- 1.5.16 Open access arrangements should apply to wholesale services to be provided over the NBN, including upgrades of services, as specified in the contract for the NBN. In accordance with section 1.4 of Schedule 2, Proponents should submit their proposed arrangements for ensuring open access to the NBN, including measures or models to ensure that access is provided on equivalent price and non-price terms and conditions. If a Proponent proposes to supply both wholesale and retail services it should demonstrate what structural measures or models it proposes be put in place and maintained to prevent inappropriate self-preferential treatment and ensure that effective open access is achieved on the terms required by the Commonwealth.
- 1.5.17 Proponents should outline how their proposed access prices have been determined with reference to the underlying costs of providing services and demonstrate that the underlying costs are incurred on an efficient basis. Access prices should be set as low as possible, to ensure the best outcome for consumers, while allowing Proponents to earn a rate of return on their investment commensurate with the risk of the project. Proponents should explain the basis on which they have derived the cost of capital, including how investment risks have been calculated.
- 1.5.18 As requested in Schedule 2, Proponents should describe how arrangements will provide scope for access seekers to differentiate their

services by allowing the customisation of technical parameters (including but not limited to speeds, quality of service, latency, jitter, contention ratios and interleaving).

- 1.5.19 Proponents should also describe how access services will allow access seekers to offer enhanced applications such as multicast, virtual private networks, high definition video-conferencing, peer to peer content delivery and IPTV if desired.
- 1.5.20 If Proponents are proposing to roll-out new network infrastructure in regions where competing networks already exist, including in some cases existing FTTN and FTTP networks, they should indicate this as requested in Schedule 2. The Commonwealth expects that there will not be economically inefficient duplication of existing FTTN or FTTP infrastructure. Proponents are also encouraged to consider interconnecting with existing FTTN or FTTP roll-outs.
- 1.5.21 Where Proponents intend to use infrastructure owned by third parties they should indicate the type of access they will require and what arrangements have been reached, or would need to be reached, to ensure it is granted on terms and conditions that are satisfactory to it. Proponents should indicate their pricing assumptions for access to third party infrastructure, as requested in Schedule 2.
- 1.5.22 Proponents should identify the parts of the network that are commercially viable in their own right and those parts that would not otherwise be commercially viable without financial support.
- 1.5.23 If a Proponent considers that mechanisms are required to facilitate the Government's objective of enabling uniform retail prices and the delivery of services to premises within the NBN footprint, it should clearly set out the nature of this mechanism. For example, if Proponents are proposing cross-subsidy arrangements within access prices to enable uniform retail prices, they should clearly identify the extent of any cross-subsidization, as well as other relevant details (see Schedule 2). If a Proponent proposes another type of mechanism to enable uniform retail prices, it should set out details about the nature of its proposed mechanism and other relevant details (see Schedule 2).

Compatibility with the Fibre Connections to Schools initiative

- 1.5.24 The Fibre Connections to Schools initiative, which is part of the Australian Government's Digital Education Revolution, will seek to build on existing arrangements to assist all Australian schools sectors to develop technology-rich learning environments with access to world-class online content and services. The Government has allocated \$100 million to the Fibre

Connections to Schools initiative and is committed to deliver broadband connections of up to 100 Mbps to Australian schools.

- 1.5.25 The Minister for Education is progressing the Australian Government's Fibre Connections to Schools initiative. Further information about the Digital Education Revolution and the Fibre Connections to Schools initiative is available from the Department of Education, Employment and Workplace Relations website (<http://www.digitaleducationrevolution.gov.au/>).
- 1.5.26 While the NBN and the Fibre Connections to Schools initiatives are separate processes, it is recognised that for the efficient and effective delivery of Government policy, the NBN should be compatible with the Fibre Connections to Schools initiative. Compatibility means that elements of the NBN should be capable of being upgraded in future, as required, to assist in the efficient delivery of the Fibre Connections to Schools initiative, for example through the provision of backhaul services. More generally it is expected that the NBN will be designed and operated in a manner that would not preclude or inhibit the delivery of the Fibre Connections to Schools initiative. Proponents should also specify what open access arrangements they will put in place for the connection of Fibre to Schools connections to their Network should such access be sought.

International Obligations

- 1.5.27 Proponents should note that Australia has multilateral international trade commitments under the World Trade Organization General Agreement on Trade in Services as well as bilateral commitments under free trade agreements such as the *United States – Australia Free Trade Agreement* and the *Singapore – Australia Free Trade Agreement*. Australia also has broader obligations in free trade and investment agreements and at customary international law. Proposals will be assessed against these obligations.
- 1.5.28 Australia's international trade commitments include commitments to afford business enterprises and telecommunications suppliers of trading partners non-discriminatory access to a range of telecommunications services and facilities, prevent certain types of anti-competitive conduct in the telecommunications sector and promote independent, transparent and technologically neutral regulation of the sector.
- 1.5.29 Further information on Australia's international trade obligations can be obtained at the website of the Department of Foreign Affairs and Trade at <http://www.dfat.gov.au/trade/> and at <http://www.dfat.gov.au/trade/negotiations/index.html>. Information on Australia's international investment agreements can be obtained by searching for 'Business and Finance' and 'Foreign investment' treaties at <http://www.info.dfat.gov.au/Info/Treaties/Treaties.nsf/>.

Critical infrastructure, national security, e-security and e-safety

- 1.5.30 The NBN will form part of Australia's critical infrastructure and will be crucial to Australia's economic and social well-being. While the Government will consider regulatory changes necessary to facilitate the NBN, Proponents should demonstrate how Proposals would comply with Australian laws relating to telecommunications interception and other assistance to national security and law enforcement agencies in respect of the NBN. They should also detail the resilience, redundancy and security of the NBN. Further details on these issues are set out in sections 1.6 and 3.2 of Schedule 2.
- 1.5.31 Further information regarding critical infrastructure, national security, e-security and e-safety policies is available at the following websites:
- http://www.ag.gov.au/www/agd/agd.nsf/Page/National_security;
 - http://www.ag.gov.au/www/agd/agd.nsf/Page/Nationalsecurity_CriticalInfrastructureProtection;
 - www.tisn.gov.au;
 - www.nationalsecurity.gov.au; and
 - <http://www.ag.gov.au/www/agd/agd.nsf/AllDocs/0023509E9CD0BAFECA2571C00017A3C6?OpenDocument>.

Opportunities for Australian and New Zealand small and medium enterprises

- 1.5.32 It is a condition for participation in this process that Proponents submit a plan outlining opportunities for Australian and New Zealand SMEs to provide goods and services to the project. Further details on this requirement are provided in clause 10.9 and section 6.1 of Schedule 2.

Capacity of the Proponent to roll-out, maintain, upgrade and operate the NBN

- 1.5.33 Proponents should note that the Commonwealth will consider the capacity of the Proponent to undertake this significant investment across a range of factors, including technical, financial, commercial and management capacity.
- 1.5.34 The financial strength of the entity that is proposed to contract with the Commonwealth to undertake the project will be important. If a consortium is bidding, this assessment will include an appraisal of the financial strength of the key members of the consortium forming the Proponent's bidding entity and will include consideration of security instruments including parent company guarantees and letters of credit. This evaluation will be undertaken through an examination of:

- 1) the Proponent's proposed consortium structure including roles and responsibilities of consortium members;
 - 2) the financial stability of the contracting entity, including an assessment of the solvency, gearing and profitability of the consortium members; and
 - 3) the financial capacity (i.e. a measure of the size of the entity) of the consortium members relative to the obligations and risk they are likely to incur under the proposed commercial structure.
- 1.5.35 Proponents should note that evaluation of Proposals will include the degree of certainty of the funding provided as evidenced by the level of commitment demonstrated and approvals obtained by all providers of debt, equity and other forms of finance. Each Proponent is also required to provide details of any conditions placed on its funding package, including key terms, cost and all other conditions as applicable.
- 1.5.36 In addition, the Commonwealth will assess the robustness of the financial assumptions underlying the Proponent's financial model. This will include a review of the assumptions relating to construction and operating costs, accounting treatment, taxation and financing. The Commonwealth will assess the financial model in terms of accuracy, functionality and the clarity of model components (i.e. assumptions, inputs, calculations and outputs).
- 1.5.37 Proponents should submit a detailed business case for the proposed network. The business case should clearly demonstrate the commercial feasibility of the project over the life of the project. It is expected that proposals will describe, as a minimum, key services, demand forecasts, project costs and key terms of financing.

The nature, scope and impact of any legislative and/or regulatory changes that are necessary to facilitate the Proposal

- 1.5.38 As requested in Schedule 2, Proponents should detail any proposed legislative or other regulatory changes (including any period of regulatory review) necessary to facilitate their Proposals. Proponents should also clearly indicate what assurances, if any, in addition to legislative or other regulatory changes, they may be seeking from the Commonwealth in relation to their Proposals.
- 1.5.39 Proponents should note that, to the extent that legislative and/or regulatory changes are required in relation to the development and operation of the NBN, these changes will be limited to those necessary to directly facilitate investment in the NBN, and will not jeopardise the Commonwealth's other objectives including open access to the NBN and the achievement of interception, security and emergency call service objectives. Legislative and regulatory changes should also be consistent with Australia's international

obligations. Information on the regulatory obligations of carriers and carriage service providers is available at <http://www.acma.gov.au>.

- 1.5.40 As requested in Schedule 2, Proponents should outline how they will ensure compliance with obligations relating to provision of assistance to national security and law enforcement agencies (including obligations under the *Telecommunications (Interception and Access) Act 1979*) and emergency service matters, including provision of emergency call services.
- 1.5.41 The Commonwealth will publish regulatory changes proposed by the successful Proponent which have been agreed by the Commonwealth.

The cost to the Commonwealth of the Proposal

- 1.5.42 The Commonwealth will contribute up to \$4.7 billion to the NBN project. In addition to its funding, the Commonwealth expects that the successful Proponent will make a significant contribution of its own to the NBN project.
- 1.5.43 Proposals will be evaluated to determine the risk-adjusted Net Present Cost (**NPC**) to the Commonwealth. Where possible, the risk-adjusted NPC of each Proposal will reflect differences in risks to the Commonwealth between Proposals.
- 1.5.44 The Commonwealth wishes to transparently disclose its costs, noting that this assessment will examine the economic substance of the transaction irrespective of its form in terms of commercial structure, with non-commercial (or non-market) elements to be separately identified as required under the Commonwealth's budget accounting framework. The *Charter of Budget Honesty Act 1998* requires that the budget be based on external reporting standards. Accordingly, the standards used in the budget are the Australian Bureau of Statistics' (**ABS**) accrual Government Finance Statistics (**GFS**) framework and Australian Accounting Standards (**AAS**), being the Australian Equivalents to International Financial Reporting Standards (**AEIFRS**). Further information on the Commonwealth's budget accounting framework is contained in Budget Paper 1, which is available at <http://www.budget.gov.au>.

The acceptability to the Commonwealth of the contract terms and conditions proposed by the Proponent and the extent to which the Proposal departs from the Commonwealth's notified commercial terms (if any)

- 1.5.45 As requested in Schedule 2, Proponents should submit an outline of their proposed contract terms and conditions applicable to their Proposals, including an outline of the rights to be acquired by the Commonwealth and the liabilities and obligations to be imposed on the Commonwealth as a result of the implementation of a Proposal. Any such terms should also address

(without limitation) details of any specific exclusions or limitations of liability (including liability caps) proposed by the Proponent.

- 1.5.46 Proponents should also respond to the indicative risk allocation table in section 5.1 of Schedule 2.
- 1.5.47 As noted in clause 3.2.3 the Commonwealth may issue further commercial terms to all Proponents who have lodged the bond described in clause 8.1.1 to give further guidance as to the Commonwealth's commercial terms.

The extent of the Proponent's compliance with the RFP

- 1.5.48 Clause 10.8 sets out minimum content and format requirements. Clause 10.9 sets out the conditions for participation.
- 1.5.49 Proponents should provide the information requested in Schedules 1 and 2, including all Annexures or attachments requested.

PART 2. CONDITIONS FOR PROPOSAL

2. Invitation

2.1. Invitation to submit Proposal

- 2.1.1. The Commonwealth invites Proposals in relation to the NBN in accordance with this RFP.
- 2.1.2. The requirements to be addressed by Proponents in their Proposals are set out in Schedules 1 and 2.

2.2. Key terms

- 2.2.1. The following table sets out the details of some key terms used in this RFP:

Closing Time	3.00pm local Canberra time on Friday, 25 July 2008.
Commonwealth	means the Commonwealth of Australia.
Confidential Information	means information that: a) is by its nature confidential; b) is designated as confidential; or c) the other party knows or ought know is confidential; but does not include information: d) which is or becomes public knowledge other than by breach of this RFP or any obligation to maintain confidentiality of Confidential Information; or e) that has been independently developed or acquired as established by written evidence.
Contact Officer	Philip Mason - Assistant Secretary National Broadband Network Taskforce c/- Department of Broadband, Communications and the Digital Economy GPO Box 2154, Canberra ACT 2601 Email: nationalbroadbandnetwork@dbcde.gov.au Fax: +61 (0)2 6271 1850
Deadline for Submission of Proponents' Clarification Questions	5.00pm local Canberra time on Friday, 18 July 2008.

Department	means the Department of Broadband, Communications and the Digital Economy.
Homes and Businesses	means premises of residential households, businesses and other users including government entities, charities and not-for-profit organisations including schools and hospitals.
Network Information	means the information provided by carriers either in compliance with proposed Part 27A of the <i>Telecommunications Act 1997</i> or on a voluntary basis.
Offer Period	Twelve (12) months after the Closing Time.
Proponent	means any entity which submits a Proposal or, where the context requires, is proposing to submit a Proposal, and where a Proposal is submitted jointly by one or more entities the Proponent is taken to include each entity.
Proposal	any Proposal submitted in response to this RFP.
Release Date	11 April 2008.
Requirements	means the information required under Schedules 1 and 2, and any minimum content and format requirements and conditions for participation set out in clause 10.
Schedule of Required Information	means the Schedule of Required Information set out in Schedule 2.

3. Obtaining RFP documentation

3.1. AusTender, the Australian Government Tender system

- 3.1.1. AusTender is the online tendering system for Australian Government Agencies. AusTender allows Proponents to download tender documentation and upload tender responses. Proponents have to first register with AusTender at <https://www.tenders.gov.au>.
- 3.1.2. Access to and use of AusTender is subject to terms and conditions. Proponents are required to agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.
- 3.1.3. It is the responsibility of Proponents to ensure that their infrastructure, including operating system and browser revision levels, meet the minimum standards as defined on AusTender. The Commonwealth does not take any responsibility for any problems arising from Proponents' infrastructure and/or Internet connectivity.
- 3.1.4. Proponents acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the

Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.

- 3.1.5. Proponents should inform themselves concerning all security measures and other aspects of the AusTender technical environment. Proponents should make their own assessment of the AusTender system prior to using it for any matter related to this RFP and no responsibility will be accepted by the Commonwealth arising in respect of any use or attempted use by any party of AusTender.

3.2. Notices

- 3.2.1. If the Commonwealth elects to vary or supplement this RFP, it will make reasonable efforts to inform Proponents in accordance with this clause 3.2.
- 3.2.2. Prior to the date for submission of a bond in accordance with clause 8.1, Proponents who have registered and downloaded the RFP will be notified by AusTender via email of any addenda issuance. It is in the interest of Proponents to ensure they have correctly recorded their contact details prior to downloading the RFP. If Proponents have not recorded their details correctly, they should amend their details and download the RFP again.
- 3.2.3. After the date referred to in clause 3.2.2:
1. the Commonwealth may deliver addenda to Proponents other than through AusTender; and
 2. the Commonwealth may provide to Proponents who have lodged a bond in accordance with clause 8.1.1 and provided a Proponent Confidentiality Deed in accordance with clause 8.1.4, details of its commercial terms for the implementation of the NBN. Any such addenda will not be accessible via AusTender.
- 3.2.4. The Commonwealth will accept no responsibility if a Proponent fails to become aware of any addendum notice which would have been apparent from a visit to the AusTender page for this RFP.
- 3.2.5. If a Proponent has obtained the RFP other than from AusTender, it should visit AusTender, register as a user and download this RFP.

3.3. AusTender help desk

- 3.3.1. All queries and requests for technical or operational support should be directed to:

AusTender Help Desk
Telephone: 1300 651 698
Email: tenders@finance.gov.au

- 3.3.2. The AusTender Help Desk is available between 9am and 5pm, local Canberra time, Monday to Friday (excluding ACT and national public holidays).

4. Lodging Proposals

4.1. Lodgment of Proposal and Proposal Closing Time

- 4.1.1. Proposals must be lodged by the Closing Time.
- 4.1.2. The Commonwealth may extend the Closing Time and will issue an addendum notifying any decision to extend.
- 4.1.3. The Proposal should be lodged by delivery to the Department's tender box on the ground floor of the:

Department of Broadband, Communications and the Digital Economy
38 Sydney Avenue
Forrest ACT 2603

in sealed envelopes and marked "National Broadband Network Project Proposal".
- 4.1.4. The Commonwealth will acknowledge, in writing, receipts of Proposals lodged in accordance with clause 4.

4.2. Documents to be lodged

- 4.2.1. Proponents should submit their Proposal in hard copy and in electronic format.
- 4.2.2. Proponents should provide the original hard copy plus 10 copies (unbound) together, including relevant supporting information. The original document should be marked "Original", and be signed and dated. The copies should be numbered sequentially and marked "Copy 1", "Copy 2", etc.
- 4.2.3. Electronic documents should be provided in a Microsoft compatible format on a CD-ROM or DVD-ROM (PC-formatted). Geo-spatial information such as maps should be provided in MapInfo vector TAB file spatial format, in GDA94 projection. Proponents should include an index of all electronic documents on the CD-ROM or DVD-ROM. In addition, the Department should also receive a separate PDF version of printable material.

4.3. Late lodgment policy

- 4.3.1. Any Proposal (including a Proposal already received by the Commonwealth at a point other than the nominated address) will be deemed to be late if it is not lodged in accordance with clause 4.1.
- 4.3.2. Subject to clause 4.3.3, the Commonwealth will not admit a late Proposal to evaluation.
- 4.3.3. The Commonwealth will admit to evaluation any Proposal that was received late solely due to mishandling by the Commonwealth.

5. Additional information and variations to the RFP documentation

5.1. Requests for Additional Information

- 5.1.1. Requests for further information in relation to this RFP should be directed in writing to the Contact Officer by the Deadline for Submission of Proponents' Clarification Questions.
- 5.1.2. Subject to clause 8.7, the only point of contact for all matters relating to this RFP and the RFP process is the Contact Officer.
- 5.1.3. The Commonwealth will determine what, if any, response should be given to a Proponent's question. The Commonwealth may circulate a Proponent's questions and the Commonwealth's response to these questions to all other Proponents in accordance with clause 3.2, without disclosing the source of the questions or revealing any confidential information of a Proponent.
- 5.1.4. Proponents should identify in their question what, if any, information in the question the Proponent considers is confidential. Inappropriate identification of information as confidential will be considered by the Commonwealth when determining what, if any, response will be given.
- 5.1.5. If a Proponent believes it has found a discrepancy, error, ambiguity, inconsistency or omission in this RFP or any other information given or made available by the Commonwealth, the Proponent should promptly notify the Contact Officer setting out the error in sufficient detail so that the Commonwealth may take the corrective action, if any, it considers appropriate.

5.2. Variation of the RFP

- 5.2.1. The Commonwealth may amend this RFP or the RFP process at any time. If the Commonwealth does so prior to the Closing Time, the Commonwealth will inform Proponents in accordance with clause 3.2.

5.3. Termination of the RFP

- 5.3.1. The Commonwealth may terminate the RFP process at any time if the Commonwealth determines that none of the Proposals submitted represent value for money or that it is otherwise in the public interest to do so.

5.4. Errors in and alterations to Proposals

- 5.4.1. Proponents should ensure that any errors or alterations made to a Proposal are clearly identified and, where appropriate, initialled. Any alteration or erasure made to a Proposal that is not clearly identified may result in the Proposal being excluded from consideration.
- 5.4.2. If the Commonwealth considers that there are unintentional errors of form in a Proposal, the Commonwealth may request the Proponent to correct or clarify the error, but will not permit any material alteration or addition to the Proposal.

6. Information management

6.1. The Commonwealth's Confidential Information

- 6.1.1. Proponents should not, and should ensure that their employees, agents or subcontractors do not, either directly or indirectly record, divulge or communicate to any person any Confidential Information concerning the affairs of the Commonwealth, the Panel or a third party acquired or obtained in the course of preparing a Proposal, or any documents, data or information provided by or through the Commonwealth except as permitted by the Confidentiality Deed referred to in clause 8.1.4.
- 6.1.2. The Commonwealth may require that all written information (whether confidential or otherwise and without regard to the type of media on which such information was provided to Proponents) provided to Proponents (and all copies of such information made by Proponents) be:
1. returned to the Commonwealth - in which case Proponents will be required to promptly return all such information to the address identified by the Commonwealth; or
 2. destroyed by Proponents - in which case Proponents will be required to promptly destroy all such information and provide the Commonwealth with written certification that the information has been destroyed.

6.2. Network Information

- 6.2.1. The Government intends to make available to Proponents Network Information it considers necessary for the development of proposals. The Network Information will be provided by carriers either in accordance with

the proposed Part 27A of the *Telecommunications Act 1997* or on a voluntary basis.

- 6.2.2. Proponents will be able to access Network Information subject to the following conditions:
1. Proponents must have provided the bond required at clause 8.1.1 and the Proponent Confidentiality Deed required at clause 8.1.4; and
 2. where Network Information is provided in accordance with the proposed Part 27A of the *Telecommunications Act 1997*, then it would be provided to Proponents subject to any applicable conditions or rules as provided for under the proposed Part 27A; or
 3. if Network Information is provided to the Commonwealth voluntarily, then it may be provided to Proponents under conditions determined by the Commonwealth.
- 6.2.3. For the purposes of clauses 6.2.2.2 and 6.2.2.3, a condition could include the lodgment of an additional bond in the form of an unconditional and irrevocable bank guarantee in favour of the Commonwealth in substantially the form set out in Section 7 of Schedule 2, and for an amount specified by the Commonwealth, or another form of security.
- 6.2.4. For the purposes of clause 6.2.2.3 conditions could also include conditions relating to the handling, disclosure and use of Network Information supported by appropriate confidentiality and security undertakings and related indemnities (separate and in addition to those required under clause 8.1.4).
- 6.2.5. Proponents who wish to access Network Information should direct their request to the Contact Officer.
- 6.2.6. In using Network Information, Proponents acknowledge that they do so at their own risk and acknowledge that neither the Commonwealth nor carriers who have provided the Network Information bear any liability in relation to their use of the data.

6.3. Proponent's Confidential Information

- 6.3.1. Subject to clauses 6.3.2 and 6.3.3, the Commonwealth will treat as confidential any Confidential Information provided by Proponents in connection with this RFP. Proponents should clearly identify in their Proposals response Confidential Information they consider should be protected.

- 6.3.2. The Commonwealth will not be taken to have breached any obligation to keep confidential Confidential Information provided by Proponents to the extent that the information:
1. is disclosed by the Commonwealth to its officers, employees, advisers or subcontractors solely in order to conduct the RFP process or to prepare and manage any resultant contract;
 2. is disclosed to the Commonwealth's internal management personnel, solely to enable effective management or auditing of the RFP process;
 3. is disclosed to the Panel to enable the Panel to assess Proposals;
 4. is disclosed by the Commonwealth to the responsible Ministers or Cabinet;
 5. is disclosed by the Commonwealth in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 6. is shared by the Commonwealth within the Commonwealth's organisation, or with another Commonwealth Department or agency, where this serves the Commonwealth's legitimate interests;
 7. is authorised or required by law to be disclosed; or
 8. is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.
- 6.3.3. The Commonwealth will only keep Confidential Information contained in, or obtained or generated in performing, any contract entered into with the successful Proponent confidential in accordance with the terms of the contract.
- 6.3.4. In considering whether to agree to keep Confidential Information confidential under any resultant contract, the Commonwealth will have regard to the matters covered by *Guidance on Confidentiality in Procurement*, Financial Management Guidance No. 3, July 2007.
- 6.3.5. Proponents should indicate in their response to Schedule 2 any request for Confidential Information that will form part of any resultant contract to be treated as confidential following the award of a contract to it.

6.4. Use of Proposal documents

- 6.4.1. All Proposals become the property of the Commonwealth upon submission.
- 6.4.2. Notwithstanding clause 6.4.1, and without prejudice to anything agreed in any subsequent arrangement, ownership of intellectual property in the information contained in a Proposal remains unchanged.

- 6.4.3. However, the Commonwealth may use any information contained in a Proposal, or otherwise provided by the Proponent, for the purposes of the RFP process (including, but subject to clause 6.3, for publicity) and the preparation and management of any resultant contract(s) or agreement(s).

7. Policy and law

7.1. Ethical dealing

- 7.1.1. Proposals should be compiled without improper assistance of current or former officers, employees, contractors or agents of the Commonwealth and without the use of information improperly obtained or in breach of an obligation of confidentiality.
- 7.1.2. Proponents should not:
1. engage in misleading or deceptive conduct in relation to their Proposal or the RFP process;
 2. engage in any collusive activity, anti-competitive conduct, or any other unlawful or unethical conduct with any other Proponent, or any other person in connection with the preparation of their Proposal or the RFP process;
 3. attempt to solicit information (except as provided for under clause 10.7.5) from, or influence improperly any current or former officer, employee, contractor or agent of the Commonwealth, or any Minister or Minister's adviser, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the RFP process; or
 4. otherwise act in an unethical or improper manner or contrary to any law.
- 7.1.3. The Commonwealth may exclude from consideration any Proposal lodged by a Proponent that, in the Commonwealth's reasonable opinion, has engaged in any behaviour contrary to clause 7. In addition, the Commonwealth may refer the matter to relevant Commonwealth, State or Territory authorities. This right is in addition to any other remedies the Commonwealth may have under law or in any contract with a successful Proponent.

7.2. Conflicts of interest

- 7.2.1. Proponents should represent and declare in Schedule 1 whether, at the time of lodging their Proposal, a conflict of interest concerning itself or a related entity exists, or might arise in relation to the Proposal or any subsequent arrangement between the Commonwealth and the Proponent for the NBN.

- 7.2.2. A conflict of interest means any matter, circumstance, interest, or activity affecting the Proponent (including the officers, employees, agents and subcontractors of the Proponent) which may or may appear to impair the ability of the Proponent to perform a subsequent agreement diligently and independently.
- 7.2.3. A conflict of interest may exist if:
1. Proponents or any of their personnel have a relationship (whether professional, commercial or personal) with individuals involved in the evaluation of Proposals; or
 2. Proponents have a relationship with, and obligations to, an organisation or individual which would affect the performance of any arrangement entered into by the Proponent and the Commonwealth regarding the NBN, or which would bring disrepute to, or embarrass, the Commonwealth.
- 7.2.4. If at any time during the RFP process, an actual or potential conflict of interest concerning itself or a related entity arises or may arise for any Proponent, that Proponent should immediately notify the Contact Officer.
- 7.2.5. If a conflict of interest arises, the Commonwealth may:
1. exclude the Proposal from further consideration;
 2. enter into discussions to seek to resolve the conflict of interest; or
 3. take any other action it considers appropriate.

7.3. Application of law and Commonwealth policy

- 7.3.1. Proponents should familiarise themselves with all relevant Commonwealth legislation and policies relating to the RFP process and the provision of the Requirements including:
1. Division 137.1 of the *Criminal Code* which makes it an offence to knowingly provide false or misleading information to a Commonwealth entity;
 2. the *Freedom of Information Act 1982* which gives members of the public rights of access to certain documents of the Commonwealth;
 3. the *Auditor-General Act 1997* which allows the Auditor-General to conduct a review or examination, at any time, of any aspect of the operations of Australian Government agencies;
 4. the *Ombudsman Act 1976* which authorises the Ombudsman to investigate the administrative actions of Australian Government departments and agencies and to investigate the actions of certain Australian Government contractors;

5. the *Privacy Act 1988* which aims to ensure that contractors and their subcontractors do not engage in an act or practice that would breach the Information Privacy Principles if done by the Commonwealth. The Privacy Act also imposes obligations directly on contractors and subcontractors to comply with the National Privacy Principles;
6. the *Telecommunications Act 1997* and the *Telecommunications (Interception and Access Act) 1979* which contain obligations relevant to the operation of the NBN;
7. the National Code of Practice for the Construction Industry (**Code**), in accordance with the Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005, reissued June 2006 (**Guidelines**), which applies to the NBN (the Code and Guidelines can be viewed at the Australian Workplace website at <http://www.workplace.gov.au/building>, and by lodging a Proposal a Proponent will be deemed to have read the Code and Guidelines). The successful Proponent (and its related entities as defined in section 2.6 of the Guidelines) must be Code and Guidelines compliant at the time of contract award and as a precondition to any contract award. Proponents are further advised that compliance with the Code and Guidelines is to extend to all subcontractors, consultants and materials suppliers who may be engaged by the Proponents on the NBN;
8. the Australian Government Building and Construction OHS Accreditation Scheme (**Accreditation Scheme**), established by the *Building and Construction Industry Improvement Act 2005*, which makes it a requirement of the NBN that persons contracted to undertake building work on the NBN be accredited under the Accreditation Scheme at the time of entering any contract for the building work and while the building work is being carried out; and
9. the Building Code of Australia.

- 7.3.2. Where Proponents are currently named as not complying with the *Equal Opportunity for Women in the Workplace Act 1999*, the Commonwealth may exclude their Proposal from further consideration.

Note: For a fact sheet on Commonwealth legislation that may apply to Australian Government contractors see <http://www.ags.gov.au/whatweoffer/areasoflaw/ContractorFactSheetAug07.pdf>

7.4. Australia's Foreign Investment Policy

- 7.4.1. Proponents should be aware of obligations that may arise under Australia's Foreign Investment Policy.
- 7.4.2. Proponents who are, or include, foreign persons as defined under the *Foreign Acquisitions and Takeovers Act 1975* are advised to consult the

Foreign Investment Review Board (**FIRB**) on their NBN Proposal to determine whether it would be subject to Government review under Australia's Foreign Investment Policy.

- 7.4.3. If the successful Proposal is likely to need prior approval by the Treasurer under Australia's Foreign Investment Policy, contractual negotiations and agreements with the successful Proponent may be subject to any imposition of conditions made by the Treasurer, as applied under Australia's Foreign Investment Policy.
- 7.4.4. Proponents should be in a position to submit a formal application to the FIRB at the request of the Commonwealth.
- 7.4.5. Further information on Australia's Foreign Investment Policy and the FIRB review process is available at <http://www.firb.gov.au> or by contacting the Executive Member of the FIRB on 02 6263 3763.

8. Proposal response requirements

8.1. Pre-Qualification Requirements – Bond/Confidentiality Deed

- 8.1.1. By 5:00 pm local Canberra time on 23 May 2008, Proponents will be required to lodge with the Contact Officer a bond in the form of an unconditional and irrevocable bank guarantee in favour of the Commonwealth:
 - 1. in substantially the form set out in Section 7 of Schedule 2;
 - 2. issued by a bank authorised to carry on business in Australia and having a rating of at least A- (Standard and Poor's Australia) or A3 (Moody's Investors Services); and
 - 3. for an amount of not less than \$5 million.
- 8.1.2. The bond will be provided as security against any liability to the Commonwealth arising from breach of a Proponent's obligations under the deeds poll in Schedule 1 and section 8 of Schedule 2 to the RFP.
- 8.1.3. Subject to clause 8.1.2, the bond (to the extent not drawn in accordance with its terms) will be returned to a Proponent upon contract execution with the successful Proponent or in the event that the Commonwealth terminates the RFP process in accordance with clause 5.3.1.
- 8.1.4. Proponents must execute and provide to the Commonwealth a Proponent Confidentiality Deed in the form set out in section 8 of Schedule 2 by 5:00 pm local Canberra time on 23 May 2008.

- 8.1.5. Proponents must lodge a bond in accordance with clause 8.1.1 and a confidentiality deed in accordance with clause 8.1.4 to:
1. be invited to bilateral meetings with the Commonwealth;
 2. be eligible to receive Network Information;
 3. receive addenda (if any) with further details on the Commonwealth's commercial terms; and
 4. be eligible to submit a Proposal.
- 8.1.6. Proponents are strongly encouraged to lodge their bond together with their Confidentiality Deed as soon as possible. The Commonwealth reserves the right to commence bilateral meetings with a Proponent as soon as is practically possible after lodgement has occurred. Accordingly, Proponents should be aware that bilateral meetings may potentially commence with certain Proponents prior to the 23 May 2008 deadline for the receipt of the bond and Confidentiality Deed.

8.2. Proposal response requirements

- 8.2.1. Proponents must complete and return with their Proposals an executed Proponent Declaration in the form set out at Schedule 1.
- 8.2.2. Proposals should also, at a minimum, respond to the requirements of Schedule 2, including the Annexures required under Schedule 2.
- 8.2.3. Proponents should provide sufficient information in their Proposals to enable the Proposals to be assessed against the evaluation criteria set out in clause 10.3. Proponents may include additional information in their Proposals.

8.3. Assumptions and supporting information

- 8.3.1. Proposals should be accurate and based, to the extent possible, on factual information. Any assumptions which are made in a Proposal should be identified and justified by providing:
1. the underlying reasons for making the assumption or estimate;
 2. where possible, specific supporting information to justify the assumptions as being fair and accurate (for example, statistical evidence, findings from studies, survey results, technical reports, risk assessments); and
 3. where possible, an estimate of the sensitivity of applying different assumptions.

- 8.3.2. Proponents using the carrier Network Information made available as part of this process, should clearly identify any risks or limitations associated with using the information and the impacts these will have on their Proposals. Where possible, Proponents should supplement the Network Information with other reliable information sources to which they may have access. Proponents should clearly identify this additional information and discuss any risks or limitations associated with its use.
- 8.3.3. Proponents may choose to use alternative network information to develop their proposals. In such cases Proponents should clearly identify the sources of their information, any limitations on using the information, any assumptions they are making in using the information and any significant differences between these sources and the provided Network Information.

8.4. Proponents to inform themselves

- 8.4.1. Information in this RFP concerning current or past requirements, specifications, location, environment or other relevant matters has been prepared from information available to the Commonwealth and may not have been independently verified. Such information may be based on projections from available historical information which may not be accurate and may assume trends or events or other matters that may not be valid or eventuate as and when expected or at all. In addition, the Commonwealth does not guarantee that this information will remain true at any future point in time.
- 8.4.2. Neither the Commonwealth, nor any of its employees, advisers, consultants, contractors or agents, warrants, guarantees or makes any representation or accepts any liability to any Proponent should any information or material provided in respect to this RFP, or Network Information disclosed to a Proponent be inaccurate or incomplete or if actual requirements, specifications, locations, environments or other relevant matters vary from the Commonwealth's current expectations. The Commonwealth accepts no responsibility for any interpretation placed by the Proponent on information or material provided in respect of this RFP.
- 8.4.3. Proponents should make their own independent assessments of the RFP and its requirements. Technical, financial and regulatory elements of the Proponents' Proposals will be presumed by the Commonwealth to have been based upon the Proponents' own independent assessments.
- 8.4.4. Proponents are considered to have:
1. examined and understood this RFP, any documents referenced in this RFP and any other information made available by the Commonwealth to Proponents for the purpose of submitting a Proposal;

2. examined all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their Proposal;
3. satisfied themselves as to the correctness and sufficiency of their Proposals including prices and proposed funding arrangements;
4. satisfied themselves as to the nature and effect of any laws relating to the NBN;
5. satisfied themselves as to the terms of the RFP, and their ability to comply; and
6. examined the AusTender Terms of Use which are obtainable on the AusTender website (<https://www.tenders.gov.au>).

8.4.5. In preparing their Proposals, Proponents should not rely on:

1. any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending this RFP other than amendments in accordance with clause 5.2.1; or
2. any warranty or representation made by or on behalf of the Commonwealth, except as are expressly provided for in this RFP.

8.4.6. Proponents must bear, and the Commonwealth will not be responsible for, any costs or expenses incurred by Proponents in submitting a Proposal in response to this RFP or in negotiating any resultant agreement.

8.5. Disclaimer

8.5.1. This RFP is an invitation to treat and is not to be taken to be, or relied upon, as an offer capable of acceptance by any person or as creating any form of contractual (including a process contract), quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds.

8.5.2. Notwithstanding any other provision of this RFP, the Commonwealth is not liable to any Proponent on the basis of any contract or other understanding (including any form of contractual, quasi contractual, restitutionary or promissory estoppel rights or rights based on similar legal or equitable grounds) whatsoever, or in negligence, as a consequence of any matter relating or incidental to this RFP or a Proponent's participation in this RFP process, including (but not limited to) instances where:

1. a Proponent is not invited to participate in any subsequent process as part of or following completion of this RFP process;
2. the Commonwealth varies the RFP process;

3. the Commonwealth decides to terminate the RFP process or not to proceed with all or any of the Requirements; or
4. the Commonwealth exercises or fails to exercise any of its other rights under or in relation to this RFP.

8.6. Offers and acceptance of offer

- 8.6.1. Lodging a Proposal will constitute an offer by the Proponent which is open for acceptance for a period of not less than the Offer Period to build and maintain the NBN in accordance with the Requirements on the terms set out in the RFP.
- 8.6.2. A Proposal is not taken to have been accepted until an agreement and any other required documentation (including a formal agreement covering the provision of Commonwealth funding for the NBN of up to \$4.7 billion) has been executed by the Proponent and the Commonwealth. Notice by the Commonwealth to any Proponent that it is, or is not, a preferred or successful Proponent does not constitute an acceptance or rejection of any Proposal.

8.7. Probity Adviser

- 8.7.1. The Australian Government Solicitor has been appointed as probity adviser for the NBN project, and will monitor the RFP process. Proponents (including potential Proponents) should contact the probity adviser if they have any probity concerns regarding the conduct of the RFP process. Contact details for the probity adviser are:

John Scala
Chief Counsel, Commercial
T: 03 9242 1321 F: 03 9242 1481
M: 0418 679 003
john.scala@ags.gov.au

Garth Cooke
Senior Executive Lawyer
T: 03 9242 1494 F: 03 9242 1481
M: 0414 822 038
garth.cooke@ags.gov.au

9. General matters

9.1. Funds and units

- 9.1.1. The Proposal must be written in English.
- 9.1.2. All measurements must be expressed in Australian legal units of measurement.
- 9.1.3. Proposal funding arrangements should be inclusive of:
 1. GST (as defined in clause 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*) where applicable;
 2. all costs of complying with this RFP; and

3. all costs associated with doing all things necessary for the implementation of the Proposal on an ongoing basis.

9.2. Joint Proposals

- 9.2.1. The Commonwealth will accept bids from consortia.
- 9.2.2. If Proponents submit a consortium Proposal, the consortium Proposal should, in addition to the information requested in Schedule 2:
 1. describe in detail in the Proposal the relationship between each member of the consortium, the structure proposed for management of the consortium and the proposed contractual structure, including the proposed party or parties to any resultant agreement; and
 2. provide in the Proposal that each member of the consortium is jointly and severally liable for the performance of all members of the consortium under any resultant agreement or that one member of the consortium is fully liable for the performance of all members of the consortium.

9.3. Part Proposals

- 9.3.1. The Commonwealth may consider stand-alone State or Territory-based Proposals where any such Proposal is assessed as assisting the Commonwealth to achieve an outcome which best satisfies the Commonwealth's stated evaluation criteria including its overall NBN Project objectives. Such Proposals:
 1. should provide sufficient information to satisfy the Schedule of Required Information;
 2. must meet the conditions for participation specified in clause 10.9; and
 3. should identify how a stand-alone State or Territory-based solution will contribute to meeting the Commonwealth's objective of achieving coverage for 98 per cent of Australian homes and businesses.
- 9.3.2. Failure to provide the information requested in clause 9.3.1.1 and 9.3.1.3 may result in the Commonwealth not considering the State or Territory-based Proposal. Failure to comply with the requirements of clause 9.3.1.2 will result in these Proposals not being further considered.
- 9.3.3. If a Proponent wishes to submit a Proposal for more than one State or Territory, the Proponent needs to submit a Proposal for all States and Territories. Proponents may only lodge one Proposal except where a Proponent lodges a separate Proposal as a member of a consortium. Failure to comply with this requirement will lead to a Proposal being excluded from further consideration.

9.4. Commonwealth's right to ask Proponents to revise National Proposals

- 9.4.1. If, subject to clause 9.3.3, a Proponent has lodged a Proposal for all States and Territories, and separate stand-alone State or Territory-based Proposals have also been received, the Commonwealth may subsequently request that Proponent to submit (a) separate proposals for nominated components of the NBN; and (b) a revised national proposal which excises the components of the NBN for which separate proposals have been requested. The Proponent will be advised of the different components at the time of any request. Proponents may at this time also be issued with an addendum to this RFP which provides further guidance as to the methodology the Commonwealth will then adopt to assess all Proposals on a national and/or stand-alone State or Territory basis.
- 9.4.2. If the Commonwealth requires Proposals for nominated components of the NBN, the Commonwealth reserves the right to accept either the Proponent's Proposal for all States and Territories or one or more of the Proponent's Proposals for different components of the NBN which have been assessed by the Commonwealth as offering best overall value for money in accordance with its stated evaluation criteria and any guidance which may be issued by the Commonwealth on its evaluation methodology pursuant to clause 9.4.1.
- 9.4.3. A Proponent is not obliged to submit Proposals for different components of the NBN if requested to do so by the Commonwealth. Should a Proponent who has lodged a national Proposal elect not to submit a Proposal for nominated components of the NBN, the national Proposal will be assessed against other national Proposals and comparatively evaluated against national Proposals which have excised nominated components of the NBN as combined with the separate stand-alone Proposals which have been received on a State or Territory basis. A national Proposal will not however be evaluated against stand-alone State or Territory-based Proposals.

9.5. Subcontractors

- 9.5.1. As requested in Schedule 2, Proponents should indicate the details of any subcontractors they propose to engage in implementing their Proposals.

10. Evaluation of Proposals

10.1. Evaluation process

- 10.1.1. Following the Closing Time, Proposals will be evaluated in the manner described in this clause 10.
- 10.1.2. Proposals will be evaluated to identify the Proposal or Proposals that represent the best value for money on the basis of the evaluation criteria set out in clause 10.3.

- 10.1.3. Value for money in the context of this RFP process is a comprehensive assessment that takes into account the costs, benefits and risks of a Proposal, individually and relative to other Proposals, and balances these factors and recognises trade-offs between them. The value for money assessment includes consideration of:
1. the overall costs and benefits of the Proposal (including long-term costs and benefits) to the Australian community as a whole;
 2. the extent to which proposed legislative and/or regulatory changes may be required to implement the Proposal and the acceptability of those changes to the Commonwealth;
 3. affordability, national security and strategic considerations relating to the NBN project;
 4. the cost to the Commonwealth of the Proposal; and
 5. other whole-of-government considerations.
- 10.1.4. By submitting a Proposal, Proponents acknowledge that the evaluation process will be undertaken on the basis outlined in this clause 10.

10.2. Panel of Experts

- 10.2.1. The Government has appointed the Panel to assist it with the evaluation process and to assess Proposals. The Panel will assess proposals against the evaluation criteria outlined in this RFP and, in accordance with the Commonwealth's rights set out in clause 11.2, may negotiate, to the extent it considers appropriate, with any one or more preferred Proponent(s).
- 10.2.2. The Panel is under no obligation to recommend any Proposal should it decide that no Proposal offers value for money.
- 10.2.3. The Panel will advise the Minister on its progress in the assessment of Proposals and the Minister may ask questions of the Panel. Where the Panel or the Minister considers it appropriate, the Panel may seek guidance from the Minister or the Minister may provide guidance on the Government's position on policy and regulatory issues.
- 10.2.4. The Panel will provide a report to the Minister on its recommendations. The report may include recommendations to shortlist one or more Proponents for parallel negotiations, recommendations to invite one or more Proponents to participate in an offer definition or best and final offer process and/or recommendations on preferred Proponents.
- 10.2.5. The Commonwealth or Panel may enter into negotiations with one or more Proponents which:

1. may be conducted on any basis which the Commonwealth (in its absolute discretion) considers will enable the Commonwealth to improve the value for money which it could obtain from acceptance of any Proponent's Proposal;
 2. without limiting clause 10.2.5.1, may involve the amendment of any aspect of a Proponent's Proposal; and
 3. does not prevent the Commonwealth or Panel from raising issues with one Proponent which it does not raise with other Proponents.
- 10.2.6. The Minister will make the final decision on the preferred Proposal following consultation with Cabinet and Cabinet agreement to any proposed legislative changes. The assessment of the national security implications of the NBN prepared by the Attorney-General's Department, in consultation with national security and law enforcement agencies, will be provided to the Government to inform the Minister's consultation with Cabinet and the final decision.
- 10.2.7. The Panel cannot make commitments of any kind in respect of any outcome of the RFP process or related matters. Similarly, the Panel cannot make a commitment of any kind on behalf of the Commonwealth, nor guarantee its recommendations will be accepted or acted upon. Any outcome in relation to a Proposal rests solely with the Commonwealth.

10.3. Evaluation criteria

- 10.3.1. The Panel will evaluate Proposals against the following evaluation criteria:

Item	Evaluation criteria
1	The extent to which the Proposal meets the Commonwealth's objectives for the NBN project (as set out in clause 1.3)
2	Capacity of the Proponent to roll-out, maintain, upgrade and operate the NBN
3	The nature, scope and impact of any legislative and/or regulatory changes that are necessary to facilitate the Proposal
4	The cost to the Commonwealth of the Proposal
5	The acceptability to the Commonwealth of the contract terms and conditions proposed by the Proponent and the extent to which the Proposal departs from the Commonwealth's notified commercial terms (if any)

Item	Evaluation criteria
6	The extent of the Proponent's compliance with the RFP

- 10.3.2 Subject to clauses 10.4 to 10.9, Proposals will be evaluated against the evaluation criteria specified in the table at clause 10.3.1 above to identify the Proposal or Proposals that represent the best value for money (as described in clause 10.1.3).
- 10.3.3 The Commonwealth may take into account information provided by a Proponent in response to one criterion in its evaluation of another criterion.
- 10.3.4 The evaluation criteria are not specified in any order of importance.
- 10.3.5 If any additional criteria are intended to be applied in evaluating Proposals, the Commonwealth will notify Proponents who will be given an opportunity to respond.
- 10.3.6 The Commonwealth or the Panel may at any time exclude a Proposal from consideration if it considers that the Proposal is incomplete or clearly not competitive.

10.4. Role of the ACCC

- 10.4.1. The Commonwealth will draw on the expertise of the Australian Competition and Consumer Commission (**ACCC**) during the evaluation process.
- 10.4.2. The ACCC will provide the Panel with ongoing advice on Proposals, including advice on issues such as wholesale access services and prices, access arrangements, proposed legislative or regulatory changes and the likely impact of Proposals on pricing, competition and the long-term interests of end-users in the communications sector.
- 10.4.3. The ACCC will also provide a written report to the Panel. This report will be due to be lodged with the Panel before the Panel is due to complete its assessment of Proposals. The Panel will consider the advice provided by the ACCC as part of its assessment process.
- 10.4.4. In order to provide its advice and report, the ACCC will be provided with Proposals by the Panel, as soon as is practicable, in order for the ACCC to conduct an individual and comparative assessment of Proposals.
- 10.4.5. In conducting its assessment, the ACCC may be able to draw on all information it has legally available to it, including the range of information it has on costs and prices.

- 10.4.6. In addition to the reserved rights of the Commonwealth in clause 11.2.1.3 of this RFP, the ACCC may also seek clarification of a Proposal from any Proponent so as to assist the ACCC to provide its written report to the Panel as set out in clause 10.4.3 of this RFP. Where the ACCC seeks clarification of a Proposal this may be either in writing or by way of an oral presentation from the Proponent. The ACCC will advise the Panel in advance when it seeks clarification, and the Panel and the Probity Adviser will have the option to attend any proposed oral presentation and to review any proposed request for clarification and any response which may be provided.

10.5. Role of other Commonwealth agencies and specialist advisers

- 10.5.1. The Australian Communications and Media Authority may provide advice on legislative and regulatory arrangements.
- 10.5.2. The Department of Foreign Affairs and Trade and the Attorney-General's Department will provide advice on the degree to which Proposals are consistent with Australia's international obligations.
- 10.5.3. The Treasury and the Department of Finance and Deregulation may provide advice on the economic and budgetary issues relating to Proposals.
- 10.5.4. The Attorney-General's Department will coordinate an assessment of the national security implications of Proposals in consultation with national security and law enforcement agencies to be provided to Government to inform the final decision-making process.
- 10.5.5. The Commonwealth or Panel may also seek advice from other agencies and specialist advisers as it considers appropriate. Specialist advisers will be retained in the fields of law, finance and commerce, communications technology and regulatory economics.
- 10.5.6. The Panel will consider advice provided by Commonwealth agencies and specialist advisers as part of its assessment process.

10.6. Submissions on Regulatory Issues

- 10.6.1. Separate to the RFP process, the Government is inviting industry and public interest groups to provide submissions to the Government on regulatory issues associated with the NBN, including consumer safeguards.
- 10.6.2. The Panel will have access to these submissions (whether published or not) and will be able to take them into account in evaluating Proposals.

10.7. Security, probity and other checks

- 10.7.1. The Commonwealth may perform such security, probity and financial investigations and procedures as the Commonwealth may determine are necessary in relation to Proponents, their employees, officers, partners, associates, subcontractors or related entities and their officers, employees and subcontractors.
- 10.7.2. Proponents should promptly provide the Commonwealth with such information or documentation that the Commonwealth requires in order to undertake such investigations. The Commonwealth may exclude a Proposal from further consideration if the Proponent does not promptly provide all reasonable assistance to the Commonwealth in this regard, or based on the outcomes of the investigations or procedures.
- 10.7.3. The Proposal evaluation process may involve:
 1. visits to some or all Proponents' sites; or
 2. discussions with, and/or visits to, customers or subcontractors of some or all Proponents, whether or not the customers are provided as referees by the relevant Proponent.
- 10.7.4. The Commonwealth may also make independent enquiries about any matters that may be relevant to the evaluation of a Proposal.
- 10.7.5. Proponents should not communicate with or solicit information in relation to the RFP process from any Government employee (or contractor), Minister or Minister's adviser other than the Contact Officer.
- 10.7.6. The Commonwealth may exclude a Proposal from further consideration if the Proponent does not comply with any requirement of this clause 10.7, or based on the outcome of any investigation carried out under this clause 10.7.

10.8. Minimum Content and Format Requirements

- 10.8.1. Subject to clause 5.4.2, the Commonwealth will exclude a Proposal from further consideration if the Commonwealth considers that the Proposal does not comply with the following requirements:
 1. Proposals are written in English (see clause 9.1.1);
 2. measurements are expressed in Australian legal units of measurement (see clause 9.1.2);
 3. the Proposal includes a completed and signed Proponent's Declaration (see Schedule 1); and
 4. clause 9.3.3.

10.9. Conditions for participation

10.9.1. The Commonwealth will exclude a Proposal from further consideration if the Commonwealth considers that the Proponent does not meet the following conditions for participation:

1. SME Participation Plans

Proponents must prepare a Plan demonstrating how they will provide full, fair and reasonable opportunity to Australian and New Zealand SMEs to supply goods and services to the NBN Project. Details of the information that should be provided in SME Participation Plans are provided in Schedule 2. Plans should be similar to Australian Industry Participation (AIP) Plans. Further information on AIP Plans can be obtained from the AIP Plan page of the website of the Department of Innovation, Industry, Science and Research:

[\(<http://www.innovation.gov.au/section/Industry/Pages/AustralianIndustryParticipationAIP.aspx>\).](http://www.innovation.gov.au/section/Industry/Pages/AustralianIndustryParticipationAIP.aspx)

Proponents must submit a Plan to be recommended for funding. Proponents will be expected to abide by any commitments they make in their Plans and report on the implementation of their Plans.

10.10. Clarification, short-listing and negotiations

10.10.1. The Panel or the Commonwealth may:

1. use any relevant information obtained in relation to a Proposal (provided in the Proposal itself, otherwise through this RFP or by independent inquiry) in the evaluation of Proposals; and
2. seek clarification or additional information from any Proponent for the purposes of Proposal evaluation.

10.10.2. Proponents should nominate in their Proposal a person for the purpose of responding to any clarification requests which may arise during Proposal evaluation or receiving other notices during the RFP process. As requested in Schedule 2, Proponents should include the name, address and contact details of that person. The person nominated by the Proponent should be authorised to represent and bind the Proponent in relation to this RFP.

11. Other Matters

11.1. Public Statements

11.1.1. Except with the prior written approval of the Commonwealth, Proponents should not make a statement, issue any document or material or provide any other information for publication in any media, concerning this RFP, the Proposal evaluation, the acceptance of any Proposal, commencement of

negotiations, creation of a shortlist, or notification that a Proponent is a preferred Proponent.

- 11.1.2. The Commonwealth may exclude a Proposal from further consideration if the Proponent does not comply with this requirement.

11.2. Additional Rights of the Commonwealth

11.2.1. Without limiting other rights contained in this RFP, the Commonwealth may do any or all of the following at any time, in its absolute discretion and without providing reasons:

1. provide additional information or clarification to any or all Proponents;
2. seek information (including by way of statutory declaration) from any Proponent as to its Proposal;
3. seek clarification from any Proponent and invite oral presentations to any one or more of the Commonwealth, the Panel, the ACCC, other Government departments or agencies and specialist advisers;
4. change the structure or timing of the RFP process;
5. allow a period of time, after clarifications have been sought, during which any or all Proponents may have the opportunity to amend or change their Proposals;
6. respond to any questions of clarification submitted by any Proponent in writing, in relation to the RFP process and disclose the details of the question and the content of the response to any such question to other Proponents;
7. decline to answer queries from any Proponent;
8. seek a written response from any Proponent in respect of any changes to the RFP process;
9. shortlist one or more Proponents and seek further information from them, without prior notice to other Proponents;
10. conduct offer definition activities with one or more Proponents, without prior notice to other Proponents;
11. seek best and final offers from one or more Proponents, without prior notice to other Proponents;
12. enter into negotiations or discussions with one or more Proponents, including parallel negotiations;
13. discontinue negotiations or discussions with a Proponent, whether or not the Proponent has been notified that it is the preferred Proponent; and

14. repeat an aspect of the RFP process, or suspend, reinstate or terminate the RFP process.

11.2.2. Proponents have no claim against the Panel or its members, the Commonwealth or its officers, contractors, employees, agents or advisers with respect to the exercise of or failure to exercise the rights under clause 11.2.

11.3. Publication of contract award

11.3.1. Proponents should note that, in the event a contract is entered into with a successful Proponent, in accordance with the Senate Order on Departmental and Agency Contracts, the Commonwealth is required to list the contracts with a consideration of \$100,000 or more that it entered into during the previous 12 months, or that have not been fully performed, on the Internet with access via the Commonwealth's home page. Further information regarding these requirements is specified in *Guidance on the Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts)*, Financial Management Guidance No. 8, January 2004.

11.3.2. The Commonwealth is also required to publish details of agreements it enters into with an estimated liability of \$10,000 or more on AusTender within 6 weeks of entering into the contract. Further information about this requirement can be found in *Guidance on Procurement Publishing Obligations*, Financial Management Guidance No. 15, July 2007.

11.4. Debriefing

11.4.1. Proponents may request an oral Proposal debriefing following the conclusion of the RFP process. Proponents requiring a debriefing should contact the Contact Officer.

11.4.2. Proponents will be debriefed against the evaluation criteria set out in this RFP. A Proponent will not be provided with information concerning other Proposals, except for publicly available information such as the name of the successful Proponent and the total price of the winning Proposal. No comparisons with other Proposals will be made.

11.5. Complaints

Any complaints arising out of the RFP process should be directed to the Contact Officer.

SCHEDULE 1 - PROPONENT'S DECLARATION

Proponents should complete this Schedule 1 and lodge this document as part of their Proposal. In the event of a joint Proposal, each entity constituting the Proponent should complete this declaration.

This is a Deed Poll made on [insert date] by [insert name of Proponent or consortium member] (**Proponent**) in favour of the Commonwealth of Australia.

RECITAL

The Proponent makes this Deed Poll in favour of the Commonwealth of Australia as part of its response to the Request for Proposals to roll-out and operate a National Broadband Network for Australia (**RFP**).

INTERPRETATION

The Proponent acknowledges that the terms used in this Deed Poll have the same meaning as in the RFP.

OPERATIVE PROVISIONS

1. Offer

The Proponent offers to roll-out and operate a National Broadband Network (**NBN**) in accordance with the Proponent's Proposal and on the conditions set out in the RFP. The Proponent undertakes not to withdraw, vary or otherwise compromise this offer for a period of not less than twelve (12) months from the Closing Time for Proposals.

2. Proponent to comply with RFP

The Proponent will comply with the conditions, including any disclaimers, contained within the RFP.

3. Proponent's Conduct

The Proponent represents that its Proposal:

- (a) does not contain any false or misleading claim or statement; and
- (b) has been compiled without the Proponent:
 - (i) engaging in any collusive bidding, anti-competitive or other unethical, improper or unlawful conduct;
 - (ii) violating any applicable laws or Commonwealth policies regarding the offering of inducements; or

- (iii) communicating with or soliciting information in relation to the RFP process from any Government employee (or contractor), Minister or Minister's adviser other than the Contact Officer.

4. Other Factors affecting the Proposal

The Proponent represents and declares that it is not aware, having undertaken all reasonable inquiries, of:

- (a) any matters relating to the commercial, financial or legal capacity or status of the Proponent or a related entity (as defined in the *Corporations Act 2001* or equivalent) which may materially affect its ability to roll-out and operate the proposed NBN, have a material effect on the conduct of the NBN Project or lead to material public criticism of the appointment of the Proponent; and
- (b) any other matters in relation to it or its related entities, including current or potential litigation or investigations, which, if it is appointed, may damage the reputation of the Commonwealth or adversely affect the successful completion of the NBN Project; and
- (c) any conflict of interest (as defined in clause 7.2.2 of the RFP) concerning itself or a related entity which exists, or might arise in relation to the Proposal or any subsequent arrangement between the Commonwealth and the Proponent for the NBN.

5. Corporate Capacity

The Proponent warrants that:

- (a) it has the capacity to respond to the RFP and execute this Deed Poll; and
- (b) there are no restrictions under any relevant law to prevent it from so responding and executing this document.

6. *Equal Opportunity for Women in the Workplace Act 1999*

The Proponent confirms that it is not, and all of its proposed subcontractors (if any) are not, currently named as non-compliant under the *Equal Opportunity for Women in the Workplace Act 1999*.

7. Acknowledgements

The Proponent has read and understood clause 8.4 of Part 2 of the RFP and acknowledges that it has made its own independent assessment of the RFP and its requirements.

The Proponent has read and understood clause 8.5 of Part 2 of the RFP and acknowledges that there is no legal or other relationship between the Proponent and the Commonwealth enforceable at the suit of the Proponent arising from the RFP or the RFP Process.

8. Governing Law

This Deed Poll is governed by and is to be construed in accordance with the laws applicable in the Australian Capital Territory. The courts of that Territory have non-exclusive jurisdiction to decide any matter related to this document.

Executed as a Deed Poll.

Executed by [Insert name of Proponent] [Insert ACN])
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

SCHEDULE 2 - SCHEDULE OF REQUIRED INFORMATION

Introduction

The Schedule of Required Information describes the information that the Proponents should provide in their Proposals. The information provided by Proponents will be used in the evaluation of their Proposals.

The Schedule of Required Information broadly reflects the evaluation criteria and is divided into eight sections, as follows:

- Section 1 – Commonwealth’s objectives
- Section 2 – Capacity to roll-out, maintain and operate the NBN
- Section 3 – Legislative and other regulatory issues
- Section 4 – Funding arrangements
- Section 5 – Proponent’s contract terms and conditions
- Section 6 – SME participation plans
- Section 7 – Form of Bank Guarantee
- Section 8 – Form of Proponent Confidentiality Deed Poll

It is Proponents’ responsibility to ensure that the information provided is clear, accurate and complete to allow a full evaluation against the evaluation criteria (clause 10.3).

Proponents should specifically address every item set out in the Schedule, as well as any other requests for information contained in the Request for Proposals (**RFP**).

Where Proponents are requested to annex documents or provide further information the Proponents should clearly mark the annexure with the applicable Schedule reference.

Important notes

Prior to preparing and submitting a Proposal, Proponents should read the National Broadband Network Request for Proposals.

Proponents should include with their Proposals a schedule that sets out any part of their Proposal which they consider should be treated as Confidential Information, together with supporting reasons. For more information about confidentiality see clause 6.3 of the Request for Proposals.

Proposals may be submitted by a single entity or a consortium. For a consortium proposal, unless otherwise specified in this Schedule, a reference to the Proponent should be read as a reference to the consortium.

The Panel of Experts may request additional information from a Proponent in order to substantiate a proposal.

This Schedule 2 will prevail to the extent that the requirements or guidance provided in Part 1 (Overview) of this RFP are inconsistent with this Schedule 2.

Section 1 – Commonwealth’s Objectives

Criterion 1: The extent to which the proposal meets the Commonwealth’s objectives for the NBN Project (clause 1.3 of Part 1).

1.1 Network infrastructure design and technical specifications

Proponents should provide a detailed description of the design, technical specifications and characteristics of the proposed network infrastructure and services. At a minimum the Proponents should address the following.

1.1.1 Network Architecture

- (a) For each network architecture offered, Proponents should provide a schematic network architecture diagram showing:
- (i) overall network hierarchy for delivery of wholesale services and retail services;
 - (ii) the type and extent of different architecture options to be deployed (FTTN, FTTP and other);
 - (iii) points of aggregation (e.g. Node/Level 1, Local/Level 2, Regional/Level 3, Major Metro/Level 4, National/Level 5);
 - (iv) nature/type of aggregation device proposed at each level in the hierarchy, including equipment type/make/model number;
 - (v) links between points of aggregations, plus the final link to end user premises and indicating the type of link proposed;
 - (vi) location of the network boundary point; and
 - (vii) proposed equipment at end user premises (e.g. xDSL modem).

1.1.2 Network Infrastructure Elements

- (a) Proponents should at a minimum provide appropriate details for each network element using the template below:

Infrastructure Element	Active/ Passive	Protocol	Function ality	Interface Type(s)	Capacity		New/ Exist.	Existing Owner
					Initial	Long Term		
Node/Level 1 Points of Aggregation								
Level 2 Points of Aggregation								
Link: Customer – Node/Level 1								

Infrastructure Element	Active/ Passive	Protocol	Functionality	Interface Type(s)	Capacity		New/ Exist.	Existing Owner
					Initial	Long Term		
Link: Level 1 to Level 2								

1.1.3 Technology Capability

- (a) Proponents should, at a minimum, provide the following details in relation to Points of Aggregation:
- (i) switch/router protocols;
 - (ii) compliance with standards;
 - (iii) technology maturity/lifecycle stage (likely end-of-life date);
 - (iv) reliable evidence of proven cost-effective deployment in similar markets;
 - (v) technology evolution and proposed upgrade path;
 - (vi) ability to support a mix of services with different uplink and downlink speeds, including a mix of symmetric and asymmetric services;
 - (vii) ability to manage, and also scalability parameters relevant to, the numbers of virtual private networks having different quality of service parameters and providing connectivity between numbers of access seekers and customers. Scalability issues relevant to individual nodes and/or whole network should be identified if restrictions or limits exist; and
 - (viii) capability to support existing customer premises equipment including telephones, telephone systems, pay telephones and modems.
- (b) Proponents should, at a minimum, provide the following details in relation to links between Points of Aggregation, plus the final link to end-user premises:
- (i) type of transmission on each link – xDSL, IP/Ethernet/MPLS;
 - (ii) transmission equipment type (e.g. DWDM);
 - (iii) compliance with standards;
 - (iv) technology maturity/lifecycle stage (likely end-of-life date);
 - (v) reliable evidence of proven cost-effective deployment in similar markets; and
 - (vi) technology evolution and proposed upgrade path.
- (c) Proponents should also detail:
- (i) capacity/bandwidth allocations to be made to the various service types, and decision criteria to be applied to the customer access service to node element and the backhaul link from a node to Points of Aggregation or Interconnect;

- (ii) ability to support a mix of services with different uplink and downlink speeds, including a mix of symmetric and asymmetric services along with equivalent clear channel through to residential Internet access services;
- (iii) proposed use of virtual private networks on the access network to manage connectivity between end users of each service with access seekers, including any scalability issues that may exist for nodes and for the network as a whole;
- (iv) if proposing a network architecture that would make use of existing copper connections to premises, the measures that would be employed to address any impediments (e.g. the use of pair gain systems, the quality of copper lines) that would otherwise preclude the delivery of minimum required dedicated downlink speed of 12 Mbps;
- (v) ability to seamlessly cutover existing services – particularly the current fixed PSTN/STS while maintaining at least the current performance standards; and
- (vi) ability to provide full continuity for legacy services, or to provide equivalent or better services for at least comparable prices to retail and wholesale customers.

1.1.4 Network management

- (a) Proponents should detail network management arrangements to ensure end-to-end service delivery, including reference to relevant national and international service standards for end-to-end services, fault detection and response/restoration/repair processes and supporting systems.

1.1.5 Customer Owned Infrastructure

- (a) Proponents should describe the impact that customer premises cabling (i.e. on the customer's side of the network boundary point) may have on achievement of the minimum 12 Mbps dedicated downlink transmission speed and other performance parameters and any arrangements to deal with these impacts.

1.1.6 Geographic variability in performance

- (a) Proponents should detail any variability in the performance characteristics based on the geographic location (e.g. distance from the node, or regional consideration) of the end user's premises.

1.1.7 Capacity

- (a) Proponents should provide:
 - (i) estimates of initial and long term demand for each of the services described at 1.4.1 and 1.5.1;
 - (ii) the capacity of each of the network elements described at 1.1.2(a) to individually carry the traffic from these numbers of services;
 - (iii) details of the location, footprint and structure of facilities (underground plant, sites, buildings etc) to accommodate new network elements described at 1.1.2(a), addressing the suitability of existing facilities and requirements for new facilities; and

- (iv) details of power consumption at both existing and new sites, covering:
 - A. method of power supply to existing and new kerbside nodes, wireless base stations, including method of primary power provision (e.g. 240V AC from mains supply), power supply housed in node cabinet/base station, types of battery used, and hours of back up;
 - B. provisions to maximise power efficiency, including the provision of low power or “sleep mode” operation for both network and customer terminal equipment; and
 - C. intelligent active measures to increase energy efficiency in the network.

1.1.8 Scalability

- (a) Proponents should detail the likely impacts on the NBN of potential changes in estimated short, medium and/or long term demand, and the proposed processes to ensure that the capacity of the network, and of individual network elements, will continue to meet growth and changes in demand, arising from, but not necessarily limited to:
 - (i) growth in the number of services in operation;
 - (ii) demand for new applications/services that require significantly greater (uplink and/or downlink) speeds beyond the capacity of the services described at 1.4.1 and 1.5.1;
 - (iii) any migration from asymmetric to symmetric services resulting in significant increases in the total (uplink and downlink) speeds of services in operation;
 - (iv) differences in the expected profile/mix of services required by customers (e.g. demand for high bit rate services, symmetrical bit rate services);
 - (v) differences in the expected geographic demand profile, (e.g. increased population and associated housing and business density in certain urban areas); and
 - (vi) providing connectivity for multiple access seekers, each requiring access to each node and connectivity to the range of service types each node is required to support.

1.1.9 Future proofing

- (a) Proponents should detail the technology upgrade path for the NBN, for example to 2020, addressing:
 - (i) the emergence of new applications/services that may require significantly greater (uplink and/or downlink) speeds beyond the capacity of the services described at 1.4.1 and 1.5.1 and that may achieve significant adoption, either generally or by customers in specific geographic areas or demographic groups;
 - (ii) potential developments in technology that may result in significantly improved, cost effective performance for the supply of such new applications/services, particularly in non-greenfield sites;

- (iii) the potential to use the proposed network as the platform for the eventual provision of fibre-to-the-premises (FTTP), the Proponent's intentions in this regard, and the estimated timeframe, cost, and funding sources for any such an upgrade;
- (iv) the decision criteria for determining future network upgrades to take advantage of technology developments that would increase the service capability of the network, including consideration of the potential costs and benefits of doing so;
- (v) issues related to network redesign that will arise should there be a decision to upgrade the network to operate at higher access speeds, (e.g. replacement of existing nodes with smaller units located closer to customers, optical fibre cables that may require extension or augmenting, or a move to FTTP);
- (vi) decision criteria for the upgrade of the network, to take advantage of future technology developments offering greater performance than the initial technology implementation;
- (vii) the extent to which the Proponent could use FTTP in rolling-out to greenfields sites; and
- (viii) the Proponent's proposed arrangements to accommodate future demands in relation to the interconnection of connections provided under the Government's Fibre Connections to Schools initiative and the provision of backhaul for such connections.

1.1.10 Network redundancy and protection

- (a) Proponents should detail arrangements for providing continuity of service to customers in the event of failure of key network elements, including:
 - (i) arrangements that ensure the network is secure, robust and delivers reliable services;
 - (ii) arrangements at each Point of Aggregation level, each category of link between Points of Aggregation levels and any other network elements of the Proponent's network architecture covering at a minimum:
 - A. the extent of redundancy and duplication at node layer;
 - B. the extent of redundancy in transmission from node to exchange service area aggregation point (or alternative aggregation point); and
 - C. the extent of redundancy offered for points of interconnect;
 - (iii) proposed minimum service availability and reliability standards for each network element and for the services described at 1.4.1 and 1.5.1; and
 - (iv) where differential standards apply according to, for example, different customer segments (such as residential or business), different geographic locations or areas, those differential standards should be specified.
- (b) Arrangements may include, but not be limited to, link route diversity, redundant switches/routers or equivalent at Points of Aggregation, Points of Aggregation bypass.

1.1.11 Interoperability

- (a) Proponents should outline the appropriate interconnection arrangements that ensure that the NBN is interoperable with other public networks, including:
 - (i) location of proposed Point(s) of Interconnection; and
 - (ii) interface and protocol specifications, including reference to relevant ratified national and international standards.

1.1.12 Suitability of technology

- (a) Proponents should, for both the hardware and software proposed for each of the infrastructure elements described at 1.1.2(a), at a minimum, detail:
 - (i) the extent of compliance with relevant ratified national and international standards;
 - (ii) capacity to comply with specific Australian legal requirements, including but not limited to interception and access to triple zero and other emergency service numbers; and
 - (iii) all relevant ratified national and international standards to be met by end-user devices available to supply the services described at 1.4.1 and 1.5.1 (including end-user devices that would meet the special needs of people with disabilities); including compatibility of end-user devices currently in use for provision of existing carriage services with the proposed new carriage services.
- (b) Proponents should provide evidence of the suitability of the technology, including:
 - (i) technical and commercial performance track record in Australia and/or internationally;
 - (ii) suitability for the provision of the services described at 1.4.1 and 1.5.1 (e.g. “fit for purpose”);
 - (iii) suitability for the provision of new higher capacity services as they become available;
 - (iv) lifecycle stage, including the likely end-of-life date; and
 - (v) likely future technology/equipment to replace existing network elements, including the likely date it would become available as a technically and commercially viable replacement and the impact on the network architecture and/or other network elements in the proposed NBN architecture.

1.1.13 Existing infrastructure

- (a) Proponents should detail:
 - (i) the extent to which existing infrastructure is to be utilised in the NBN and the extent to which existing infrastructure is already capable of delivering a minimum dedicated downlink speed of 12 Mbps over each connection; and

- (ii) how this is linked to the proposed roll-out schedule, including the proposed use of pre-existing FTTN and FTTP equipment, conduit, manholes, pits, exchange buildings, and existing backhaul transmission.
- (b) Proponents should identify:
- (i) the current owner of those elements;
 - (ii) the capacity required in the short, medium and long term;
 - (iii) the technical arrangements for sharing that infrastructure, covering any interface and protocol issues;
 - (iv) any requirement to augment those network elements to meet the expected demand, addressing both capacity and performance requirements (in this regard, performance requirements include, but should not be limited to, any changes to performance specifications/requirements and the relevant ratified national and/or international standards);
 - (v) all costs associated with that augmentation;
 - (vi) whether or not exclusive use of specific infrastructure elements for NBN purposes would be required and in the event of exclusive use being required, indicate what, if any, of the current owner's other infrastructure might be made redundant as a necessary consequence;
 - (vii) the impact of all these factors on the proposed NBN rollout; and
 - (viii) the likely impact of the use of this infrastructure on the ongoing provision of existing services that will not be addressed by the NBN, especially in those localities where the NBN will not be rolled out.
- (c) In cases where the Proponent considers existing exchange-based services cannot feasibly co-exist with the NBN, Proponents should clearly set out the timetable and processes for transition between existing services and the NBN.

1.1.14 ISP-level filtering

- (a) Proponents should describe how the network design can be utilised to support the Government's national cyber safety objective of ISP-level content filtering.

Supporting information

*In response to section 1.1, Proponents should attach as **Annexure A** key technical studies, engineering plans, reports or other documentation that substantiate the above description of the design including current and future levels of demand for each of the different services, current and future projected network traffic levels, technical specifications and performance characteristics of the proposed infrastructure and services.*

1.2 Network coverage

- (a) Proponents should clearly indicate the extent of:
 - (i) coverage of the proposed NBN infrastructure, noting that the network is to cover 98 per cent of homes and businesses; and

- (ii) any variability in the performance characteristics, bearing in mind that a minimum dedicated downlink transmission speed of 12 Mbps should be available over each connection provided over the NBN.
- (b) Proponents should provide:
- (i) a listing of all Exchange Service Areas (**ESAs**) and Distribution Areas (**DAs**) (as applicable) to be wholly or partially serviced by the NBN, addressing details of ESAs and DAs served by existing and new FTTN and FTTP technologies, and other technologies to be used by new NBN; and
 - (ii) this information in the mapping format required in Annexure B (see below).
- (c) Proponents should specify their methodology to:
- (i) recognise and identify locations that accommodate a home or a business, and to identify where homes and business are co-located to avoid double-counting; and
 - (ii) ensure that the minimum coverage applies to homes as occupied dwellings and not to total dwellings.
- (d) Proponents should detail geographic coverage of their preferred service speed where that would exceed the minimum specified requirements. Proponents should indicate whether this capability will be open to all.
- (e) Proponents should detail the capacity for expansion of coverage beyond the specified minimum, including any associated timetables.
- (f) Proponents should also detail any proposed exclusions, such as exclusion of external territories, protectorates, and the number of residential and business locations in those exclusion zones.
- (g) Proponents should indicate the extent to which Proposals are able to prioritise areas that cannot currently access minimum speeds of 12 Mbps.
- (h) Proponents should identify where the NBN would cover locations already served by existing networks able to provide a minimum 12 Mbps dedicated downlink transmission speed.

Supporting information

*Proponents should attach as **Annexure B** maps and other supporting information which show:*

- *the geographic areas over which services would be offered—to be provided in MapInfo vector TAB file spatial format in GDA94 projection;*
- *the number and distribution of premises within each geographic area for which access to all services will be available and the extent of any variability in the performance characteristics of each service within the Network footprint; and*
- *any variability of technology to be used to deliver each service within each geographic area.*

1.3 Timeframes and project schedule

- (a) Proponents should provide, at a geographically disaggregated level, the start date and timeframes for the rollout of the proposed network infrastructure, the supply of

wholesale and, where relevant, retail services and any planned geographic expansions and technological upgrades.

- (b) Proponents should include a detailed project schedule, including milestones, critical paths, key decision points and the identification of any required outcomes to move forward.
- (c) Proponents should detail milestones reflecting the progressive coverage targets to be met during the deployment period.
- (d) Where relevant, the Proponent should indicate whether the timeframes for the completion of the infrastructure build and supply of services and applications (e.g. voice and broadband services) would differ and any planned prioritisation of regions. All key assumptions upon which the timeframe is based should be set out and any risks to the schedule should be identified.

Supporting information

*Proponents should attach as **Annexure C** information that substantiates the practicality and feasibility of fully implementing and successfully operating the NBN within the proposed timeframe.*

1.4 Open access and competition

- (a) Proponents should provide supporting information as described in sub-sections 1.4.1 through to 1.4.7 below.

1.4.1 Wholesale services

- (a) Proponents should, as a minimum, provide a service description for each wholesale service to be offered by the NBN using the template below. Amongst other things, Proponents should include for each wholesale service:
 - (i) the extent to which the service is compatible with equivalent existing services and applications; and
 - (ii) arrangements for seamless transfer of existing services and applications to the new service where appropriate.

Table 1.4.1(a): Services and Applications: Wholesale				
Parameter	Service 1	Service 2	Service 3	Service n
Residential/Business				
General product description, Including key features, objectives, functions				
Selectable features				
Technical Specifications				
Access Link:				
<ul style="list-style-type: none"> • Uplink and downlink speeds (Mbps) (where applicable) 				

This specification should provide information (where applicable) on minimum, average and peak speeds				
<ul style="list-style-type: none"> Compliance with relevant ratified national and international standards, guidelines and codes 				
<ul style="list-style-type: none"> Interfaces <p>Covering interfaces at each end and compliance with relevant ratified national and international standards, guidelines and codes</p>				
Performance characteristics (as appropriate)				
<ul style="list-style-type: none"> Variations in speed/performance with distance 				
<ul style="list-style-type: none"> Variations in performance within the network footprint 				
<ul style="list-style-type: none"> Contention and quality of service: 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> from node to next point(s) of aggregation 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> from customer premises to node 				
<ul style="list-style-type: none"> Latency 				
<ul style="list-style-type: none"> Jitter 				
<ul style="list-style-type: none"> Reliability 				
<ul style="list-style-type: none"> Availability 				
<ul style="list-style-type: none"> Error Performance 				
Service Assurance:				
<ul style="list-style-type: none"> Fault response times 				
<ul style="list-style-type: none"> Repair times 				
Service connection times				
Limitations and exceptions				
Comparability to existing services				
Arrangements for seamless transfer				

- (b) Wholesale services should be taken to include the full range of wholesale services including facilities access, interconnection, basic access (including bitstream), transmission (including backhaul) and other wholesale services (e.g. ancillary services), to the extent that they are offered by Proponents, including all those relating to: voice, video, IPTV (interactive: point to point video calls), high-definition television, high-definition video conferencing, multipoint (teleconferencing), data (Ethernet: point to point, point to multipoint, permanent and connection-based; other: point to point, point to multipoint, permanent and connection-based) and other services.
- (c) Proponents should describe the ability of the NBN to support smart metering and/or smart grid functionality.

1.4.2 Technical aspects of open access

- (a) Proponents should specify the proposed technical arrangements to facilitate open access to the National Broadband Network and services.
- (b) Wholesale services nominated should be consistent with the services described at 1.4.1. Wholesale services should be taken to include the full range of wholesale services including facilities access, interconnection, basic access (including bitstream), transmission (including backhaul), and other wholesale services (e.g. ancillary services).
- (c) Proponents should:
 - (i) detail the appropriate access and interconnection requirements to be met by service providers in acquiring wholesale services using the template below:

Wholesale Service	Interface(s)	Protocol(s)
Service 1		
Service 2		
etc		

- (ii) also detail, in either the template or separately, the:
 - A. technical and other arrangements for service providers that acquire wholesale services;
 - B. proposed location of Points of Interconnection for each wholesale service;
 - C. proposed location of Points of Interconnection to other carrier networks for retail services;
 - D. backhaul capacity and availability to and from the Points of Interconnection;
 - E. relevant ratified national and international standards for the interfaces and protocols;
 - F. technical arrangements for management of video channels from multiple service providers, such that they are available to all retail customers and/or to retail customers of individual service providers;

- G. other requirements as necessary for the provision of the full range of existing and future applications/content services, including but not restricted to voice, internet, other data and video services meeting at least the standards of existing services available to wholesale and retail customers;
 - H. arrangements for another provider to interconnect a fibre connection to the premise, such as to a school, with the NBN; and
 - I. such other matters as the Proponent considers demonstrates the strength of the open access aspects of its Proposal.
- (iii) Where the Proponent proposes to supply both wholesale and retail services over the NBN as a vertically-integrated operation, it should specify what measures and models it proposes be put in place to ensure equivalence between itself and its wholesale customers in relation to the supply of interconnection, access and other wholesale services.
 - (iv) If a Proponent proposes to offer bitstream services as the preferred access services over a FTTN and/or FTTP network, the Proponent should specify how those services will provide scope for access seekers to differentiate their services by allowing the customisation of technical parameters (including but not limited to quality of service, speeds, latency, jitter, contention ratios, usage limits on data download, rate shaping and interleaving).
 - (v) Proponents should also specify how bitstream services will allow access seekers to offer enhanced services such as multicast, virtual private networks, high definition video-conferencing, peer to peer content delivery and IPTV if desired.
 - (vi) If a Proponent is not intending to offer a bitstream service the Proponent should specify how its access services will provide access seekers with scope to differentiate their services as set out in paragraph 1.4.2(c)(iv).
 - (vii) Proponents should specify the measures and models that will ensure that equivalence is provided in prices for interconnection, access and other wholesale (including backhaul) services over the life of the investment, including any proposed approach to adjusting prices.
 - (viii) Proponents should specify the measures and models that will ensure that equivalence is provided in non-price terms and conditions for interconnection, access and other wholesale (including backhaul) services over the life of the investment, including:
 - A. service qualification and activation;
 - B. billing;
 - C. fault repair;
 - D. maintenance;
 - E. access to buildings, shelters and facilities for interconnection; and
 - F. any proposed approach to adjusting these.
 - (ix) Proponents should specify measures to ensure that equivalence is provided in arrangements for supplying wholesale customers with information about changes to the NBN.

- (x) Proponents should specify arrangements to provide wholesale access to backhaul arrangements and the nature of the services.
- (xi) Proponents should describe proposed arrangements to enable application service providers to access the NBN at different layers of the network to provide new and innovative applications to retail customers.
- (xii) Proponents should specify what open access arrangements (for example, Points of Interconnection, prices and non-price terms and conditions, capacity provisioning) they will put in place for linking the NBN with Fibre Connections to Schools connections should such access be sought.

1.4.3 Wholesale pricing and non-price terms and conditions

- (a) Proponents should provide details on pricing and relevant access terms and conditions, including the following:
 - (i) prices for interconnection, access and other wholesale services (including backhaul) as nominated in response to 1.4.1 over the investment term of the infrastructure, and the proposed approach to any price re-adjustment; and
 - (ii) non-price terms and conditions for these services.
- (b) In detailing price and non-price terms and conditions for wholesale services, the Proponent should provide, on a per service basis, to the extent relevant, information including: downlink and uplink speeds, interconnection charges, customer service activation and deactivation charges, billing arrangements, any periodic charges, fault rectification, service qualification, service and application level assurances and other relevant wholesale service features.
- (c) Proponents should provide the basis and rationale for the proposed price and non-price terms and conditions for wholesale services described above, including: costs and costing methodology, a breakdown of the proposed pre- and post-tax return on investment, initial and projected take-up rates, and price review and adjustment mechanisms.
- (d) Proponents should specify what will happen to the proposed wholesale prices over time if network traffic differs significantly from forecasts.
- (e) Proponents should specify the proposed mechanisms for enforcing, and resolving commercial disputes, on the terms and conditions for access and interconnection services provided on the NBN.
- (f) Proponents should specify:
 - (i) the extent to which the Proposal requires wholesale inputs from other providers or access to facilities owned by others;
 - (ii) the means by which the price and the non-price terms and conditions for these inputs will be determined (e.g. through commercial negotiation, arbitration); and
 - (iii) the pricing assumptions the Proponent has made in relation to its access and use of such inputs from other parties and the significance of these assumptions for its investment model.

1.4.4 Mechanisms to support uneconomic services

- (a) If a Proponent is proposing cross-subsidy arrangements within access prices to support uneconomic services or achieve other outcomes, the Proponent should identify these services and outcomes, the amounts of the losses and the cross-subsidies separately, the rationale for them, and methodology for their calculation.
- (b) If a Proponent proposes another type of mechanism to support otherwise uneconomic services or achieve other outcomes, it should identify the services and outcomes concerned and set out details about the nature of its proposed mechanism and other relevant details.

1.4.5 Competition

- (a) Proponents should explain how the proposed approach to the roll-out and operation of the NBN will facilitate robust competition between market participants, now and in the future. Proponents should include in their explanation the extent to which the Proposal creates or affects barriers to entry, expansion or exit and the Proposal's likely impact on industry structure and its effect on competition.

1.4.6 Migration of existing wholesale customers

- (a) Proponents should describe in detail arrangements to migrate existing wholesale services and customers to the NBN.

1.4.7 Information strategy

- (a) Proponents should describe the proposed information and communications strategy to inform wholesale customers of roll-out plans, service migration, and terms and conditions of services. Proponents should also detail proposed arrangements for:
 - (i) meeting Australian Government requirements for the protection of Australia's critical infrastructure;
 - (ii) handling and protection of confidential information of wholesale customers;
 - (iii) managing wholesale customer complaints and requests; and
 - (iv) ensuring equivalence in arrangements for providing wholesale customers with information about changes to existing networks.

1.5 Outcomes for consumers

- (a) Proponents should describe the extent to which the Proposal will benefit consumers (residential, business and others) over the short and long-term through the availability of communications services and applications at affordable prices.

1.5.1 Retail services

- (a) If retail services are being offered, Proponents should, at a minimum, provide a detailed description for each retail service to be offered in the template below. Amongst other things, Proponents should also detail for each retail service:
 - (i) the extent to which the service is compatible with equivalent existing services and applications; and
 - (ii) arrangements for seamless transfer of the existing services and applications to the new service where appropriate.

Table 1.5.1.(a): Services and Applications: Retail services				
Parameter	Service 1	Service 2	Service 3	Service n
Residential/Business				
General product description, including key features, objective, functions				
Selectable features				
Technical Specifications				
Access Link:				
<ul style="list-style-type: none"> Uplink and downlink speeds (Mbps) (where applicable) <p>This specification should provide information (where applicable) on minimum, average and peak speeds</p>				
<ul style="list-style-type: none"> Compliance with relevant ratified national and international standards, guidelines and codes 				
<ul style="list-style-type: none"> Interfaces <p>Covering interfaces at each end and compliance with relevant ratified national and international standards, guidelines and codes</p>				
Performance characteristics (as appropriate)				
<ul style="list-style-type: none"> Variations in speed/performance with distance 				
<ul style="list-style-type: none"> Variations in performance within the network footprint 				
<ul style="list-style-type: none"> Contention and quality of service: 				
<ul style="list-style-type: none"> – from node to next point(s) of aggregation 				
<ul style="list-style-type: none"> – from customer premises 				

to node				
• Latency				
• Jitter				
• Reliability				
• Availability				
• Error Performance				
Service Assurance:				
• Fault response times				
• Repair times				
Service connection times				
Limitations and exceptions				
Comparability to existing services				
Arrangements for seamless transfer				

- (b) Retail services should be taken to include, to the extent that they are offered by Proponents, all those relating to: voice, data (Ethernet: point to point, point to multipoint, permanent and connection-based; other: point to point, point to multipoint, permanent and connection-based), video, IPTV (interactive: point to point video calls), multipoint (tele-conferencing), high-definition television, high-definition video-conferencing and other services.

1.5.2 Other retail applications

- (a) Proponents should detail any other new and innovative retail applications that Proponents will initially offer on the NBN.

1.5.3 Retail pricing

- (a) At this stage, retail pricing information is sought for key entry-level services for residential and business users. For example, these key services might include:
- a basic broadband service providing a minimum of at least 12 Mbps dedicated downlink transmission speed over each connection provided to a premises;
 - any other entry-level broadband services the Proponent proposes to offer;
 - a basic telephone service (i.e. voice connectivity);
 - the ongoing provision and maintenance of an access service to a premises (i.e. line rental), where this is not otherwise bundled with voice and/or broadband services;
 - bundles including an access service (if applicable), a telephone service and either basic or entry-level broadband services, as described above; and

- connection of a new access line to a premises.

1.5.4 Retail services and price and non-price terms and conditions of retail services

For wholesale-only Proposals:

- Proponents should provide estimated price and non-price terms and conditions for key entry-level and basic retail services that a wholesale customer could offer consumers. Proponents should also set out the rationale for this estimate.
- Proponents can if they wish also provide anticipated price and non-price terms and conditions for any other retail services and applications that a wholesale customer could offer consumers. Proponents should also set out the rationale for this estimate.

For Proposals that offer retail services:

- Proponents should describe the arrangements for the supply of retail services and applications and the range and nature of the proposed retail services and applications (i.e. the levels of functionality and performance).
- Proponents should describe the proposed price and non-price terms and conditions for key entry-level and basic services to be supplied, including:
 - price and non-price terms and conditions for the key entry-level and basic retail services over the investment term of the infrastructure;
 - any geographical variation in pricing, noting the Government's objective of uniform national pricing, or non-price terms and conditions – for example, connection or fault repair times; and
 - any proposed approach to the re-adjustment of price terms and conditions over the investment term of the infrastructure.
- In describing price and non-price terms and conditions for the retail services and applications, the Proponent should provide, on a per service basis, to the extent relevant, information including: downlink and uplink speeds, connection and disconnection fees, service activation and deactivation fees, any periodic charges, billing arrangements, data usage allowances, any excess data fees, shaping policies and service level assurances.
- In providing pricing information for key entry-level retail services, the Proponent should identify any differences in proposed prices and non-price terms and conditions for residential and business customers.

All Proponents:

- Proponents should provide a comparison between the price and non-price terms and conditions of the proposed services and applications with those currently available.
- Proponents should explain the basis and rationale for the proposed price and non-price terms and conditions described above for retail services and applications, including costs and costing methodology, expected take-up rates and price adjustment mechanisms.
- Proponents should describe what will happen to retail prices over time if network traffic differs significantly from forecasts.

1.5.5 Migrating existing retail services and customers

- (a) Proponents should describe arrangements to migrate existing retail services and customers to the NBN, and the extent to which the Proposal involves risks for consumers and how these risks (if any) are to be mitigated.

1.6 Security of the NBN and protection of critical infrastructure

- (a) Proponents should indicate how their proposals will meet the security objectives of the Australian Government, including compliance with Australian laws relating to telecommunications interception and provision of assistance to national security and law enforcement agencies. As a minimum, Proponents should describe:
 - (i) how the Proponent would detect and prevent unauthorised access to the NBN, its communications and its data;
 - (ii) how the Proponent will ensure compliance with requirements for telecommunications interception;
 - (iii) what measures will be implemented by the Proponent to ensure resilience in the face of foreseeable hazards, including adequate availability in the face of loss of power or water, damage to cabling, failure of key equipment and loss of control facilities;
 - (iv) the Proponent's physical security measures for protecting components of the network, such as facilities housing technical components of the NBN;
 - (v) the IT security techniques employed to protect the NBN;
 - (vi) the Proponent's proposed logical security of major components and equipment within the NBN;
 - (vii) the extent of dependence on a single brand/model of equipment and software across the NBN; and
 - (viii) the extent to which the operation of the NBN (including any aspect of NBN architecture, routing of network traffic, storage of customer data, corporate governance or other aspect of the proposal) will not be subject to Australian jurisdiction and/or may be subject to the laws of other countries. Proponents should describe how relevant Australian laws would apply to arrangements for NBN management, outsourcing of support and other services, and the location of NBN control and administration centres.

Section 2 – Capacity to roll-out, maintain and operate the NBN

Criterion 2: Capacity of the Proponent to roll-out, maintain and operate the NBN.

- (a) In reference to criterion 2, Proponents should outline their capacity to deliver, operate and continue to invest efficiently in the NBN and services and the extent to which the Proposal would involve legal or other risks for the Commonwealth. As a minimum the Proponents should provide detailed information as described in sub-sections 2.1 through to 2.11 below.

2.1 Proponent structure

Proponent information

- (a) Proponents should provide a summary sheet of their details including:
- (i) Full company/organisation name including ABN (or foreign equivalent);
 - (ii) Principal business address;
 - (iii) Proponent's contact: name, address, phone, facsimile and email;
 - (iv) Officers: names of all directors or officers (or their equivalent) of the Proponent;
 - (v) Insurance: provide details of insurance policies held by the Proponent including level of cover and currency;
 - (vi) Location from which the NBN project is proposed to be delivered; and
 - (vii) Licences: all applicable licences held by the Proponent which are current including copies of same.

Corporate structure

- (b) If the Proponent is part of a corporate group, the Proponent should detail its corporate structure.

Consortium structure

- (c) In the case of a consortium, the Proponent should clearly detail the consortium structure and the structure of the consortium members. Proponents should identify:
- (i) how the Proponent will be structured to engage with the Commonwealth to deliver the NBN and meet its objectives (e.g. incorporated / unincorporated joint venture);
 - (ii) the Proponent members' key accountabilities, roles and responsibilities for components of the NBN and how they will be structured, including respective debt and equity contributions;
 - (iii) how the Proponent's project team will be structured and the nominations for key positions; and
 - (iv) details and roles of any subcontractors.
- (d) Where the Proponent or consortium intends to use another entity other than itself or a consortium member to deliver the project, provide details of this entity and its structure.

Supporting information

*Proponents should attach as **Annexure D** a diagram showing the overall Proponent structure, and in the case of a consortium, a diagram illustrating the overall consortium structure, including the roles of each consortium member. Attach as **Annexure E** the structure of any special purpose vehicles, other key stakeholders and contractors.*

*If applicable, Proponents should attach as **Annexure F** a copy of the consortium agreement(s) or other commitment (e.g. Memorandum of Understanding) for consortium members to work together in connection with this proposal.*

2.2 Roles and responsibilities of key stakeholders

- (a) The Proponent should describe the roles, responsibilities and financial interests of key stakeholders, including vendors, financiers and contractors.

2.3 Financial capability

- (a) The financial capability of the Proponent to deliver the Proposal should be clearly set out. The Proponent should provide evidence that it has the capacity to deliver the project with minimal risk that it will not meet its commitments. A crucial component is the Proponent's ability to fund the establishment of the NBN having regard to the Commonwealth's contribution of up to \$4.7 billion.
- (b) Proponents should provide detailed information setting out the full cost of the network roll-out and ongoing maintenance and operational costs. A crucial component of this information is how it shows its ability to fund these costs, including through retained earnings, debt, equity and Australian Government funding.

2.3.1 Financial strength and support

- (a) Proponents should attach as **Annexure G** the following information as applicable.

Statement of Financial Strength for each consortium member

- (i) A copy of the full audited financial report for the last three financial years including the financial statements and all notes to the financial statements for each consortium member. Where applicable, the most recent interim financial statements are also to be provided.
- (ii) Where the financial statements for the most recent financial year remain unsigned, audited accounts for the prior year should be provided along with pro-forma financial statements for the most recent financial year. A statement as to the accuracy of the pro forma financial statements should be provided.
- (iii) Where the above are not available (e.g. for companies not required to prepare statutory audited financial statements), Proponents should provide unaudited financial statements and other financial or other such information that will enable the Panel to conduct a financial risk assessment, such as special purpose financial reports or company management accounts, and be accompanied by certification of a director, proprietor or trustee of the Proponent affirming that the financial statements provide a true and fair view of the financial affairs of the entity.
- (iv) Identification of any material change in the financial position of each consortium member, since the date of the last audited financial statements.

- (v) Identification of any events which could potentially impact the financial position of any of the consortium members since the date of the last audited financial statements and up to the date of the Proposal, for example acquisitions and divestments.
 - (vi) Information on any significant litigation, arbitration or administrative proceeding of or before any court, arbitral body or agency which has been started or threatened against any consortium members or any of their subsidiaries.
 - (vii) A listing of the following contingent liabilities for each consortium member:
 - (1) all significant pending litigation not reflected in the financial statements supplied; and
 - (2) a list of all significant capital commitments, not reflected in the financial statements, that will occur over the next 24 months.
 - (viii) Current credit ratings for each consortium member.
 - (ix) A listing of all significant loan and credit facilities in place for each consortium member.
 - (x) Any breaches or near breaches in debt covenants of the past 5 years for each consortium member.
 - (xi) Any further information, not already supplied that may impact on any consortium member's ability to meet the financial obligations associated with delivering the project.
 - (xii) Current and planned financial commitments to other projects, including an assessment of the extent to which these commitments may affect the ability to finance working capital requirements for the project.
- (b) If, at any time after the date of this RFP until a contract is executed with the successful Proponent there has been a material adverse change to the financial standing of any of the Proponent's consortium members, Proponents should promptly notify the Commonwealth.
- (c) Proponents should note that the Panel may also undertake its own independent enquiries to assess the financial viability of the Proponent or consortium members including a credit reference by an independent rating agency. For this assessment to be completed, a representative from one of these organisations may contact the Proponent concerning the financial information provided. The financial assessment report is specifically for use by the Panel, the Minister and the Cabinet and will be treated as confidential.

2.3.2 Statement of Support and Guarantee structure

- (a) The Commonwealth anticipates that equity providers and any principal subcontractors (collectively the "consortium members") responding to this RFP will have in place appropriate performance guarantees and that the guarantee, security or any other instrument used to secure performance obligations under the NBN is commensurate with each consortium member's proposed role and acceptance of risk.
- (b) Proponents should therefore provide:

- (i) An outline of the relationship of consortium members to each other and the Proponent and within their own corporate structures.
 - (ii) Details of all other forms of contractual support from the consortium members to the Proponent including the terms of any securities, performance guarantees, costing guarantees, third party sales contracts or loan guarantees.
 - (iii) Evidence (e.g. confirmation letter) that the ultimate parent company will fully guarantee the obligations of the subsidiary. Full details of the parent company guarantee, undertaking, or indemnity, should be supplied as part of the Proposal.
- (c) Where a parent company fully guarantees the financial obligations of its subsidiary nominated as a consortium member for the project, Proponents are requested to provide the information listed above under section 2.3.1, '*Statement of Financial Strength for each consortium member*' for the parent company as well as the consortium member.

2.4 Business case

- (a) The Proposal should demonstrate how it is considered to be commercially feasible on an ongoing basis. Proponents should therefore provide a detailed business case for the NBN which should include as a minimum the following:

Strategies for success

- (a) The business case should identify the Proponent's strategies in order to help achieve the Commonwealth's objectives for the project. The business case should include the key factors that would ensure the success of the NBN and key risks to the project.

Financial projections

- (a) Detailed financial projections of the project wholesale and retail revenues and key capital and operating costs should be presented.
- (b) The business case should also provide an overall perspective for the financing of the project. The approach to financing, various sources and certainty of financing and rationale for selecting the particular financing options for the project should be described. The use and application of the financing sources, including the government's financial investment in the project and proposed returns, should be detailed.

*Proponents should attach as **Annexure H** a summary budget for the NBN proposal using the template below, demonstrating the ability of the project to cover all costs related to the Proposal.*

	Investment Term ^					Total
	Year 1	Year 2	Year 3	...	Year 15+	
Expenditure / costs (AUD)						
construction and network establishment costs						\$ -
network operating costs						\$ -
Total annual costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Proposed project funding*						\$ -
Projected revenue						
retail revenue						\$ -
wholesale revenue						\$ -
other revenue						\$ -
Total annual revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

^ Proponents should amend the number of years to suit the investment term of the infrastructure.

* Proponent should separately identify each type and source.

(c) The table should include non-discounted (nominal) dollars and exclude depreciation. Proponents should specify any indexation and discounting assumptions used, as applicable.

(d) All measurements should be expressed in Australian legal units of measurement.

Market factors

(a) The Proponent should include projections of the market supply and demand (take-up rates) as well as details on how trends and market factors, such as changing market

preferences would impact on the viability and performance of the NBN. Marketing strategies, key product offerings and pricing of products should also be discussed.

Industry integration

- (a) The Proposal should include a plan on how the Proponent intends to work with its business partners, existing market participant(s) and future participant(s), to ensure a smooth and integrated process and to minimise any disruptions in the service delivery to end-users.

Operating and Service Delivery Strategy

- (a) The business case should provide a detailed operating plan for the investment term of the infrastructure on how the Proponent will help to achieve the project objectives.
- (b) It is expected there will be consistency of information provided in the business case and other Schedule 2 information provided by Proponents.

2.5 Ownership and Operational structure of the NBN

- (a) Proponents should describe the proposed ownership and operational structure of the NBN. This should include:
 - identifying each entity to be involved in the investment, establishment, and management of the NBN, including the Government's role;
 - any functional or structural separation of network ownership from wholesale and retail businesses; and
 - exit arrangements for the Commonwealth and the Proponent from the NBN.

2.6 Resource capacity for the project

2.6.1 Management and technical capabilities and experience

- (a) Proponents should provide evidence demonstrating the Proponent's management and technical capabilities and experience to roll-out, maintain and operate the NBN.
- (b) The onus is on the Proponent to provide evidence that it has the capacity to deliver the project, with minimal risk that it will not meet its commitments. Proponents should describe any experience in constructing, operating and offering services over telecommunications networks.

Supporting Information

*Proponents should attach as **Annexure I** the following information:*

- *the management structure of the Proponent; and*
- *the extent and nature of the Proponent's (and for a consortium, consortium members') experience with the roll-out and operation of high speed broadband infrastructure, including integration with existing infrastructure and services.*

2.6.2 Other resources

- (a) Proponents should describe how they propose to bring and organise the human resources needed to deliver the project, including:

- (i) Construction labour – explain how labour will be sourced (e.g. in-house, sub-contract, agency hire);
 - (ii) Consultants – explain what consultants will be engaged by the Proponent to deliver components of the project and how they will be engaged; and
 - (iii) Subcontractors – explain what elements of the project scope are expected to be delivered through subcontractors and how the subcontractors will be selected.
- (b) The Proponent should also explain how the Proponent will assure the Commonwealth the resources nominated will actually be brought to the project.

2.7 Project management

*Proponents should attach as **Annexure J** a detailed project management plan that describes the major project elements for the Proposal, including key milestones and time periods for each project element.*

2.8 Network construction and operation

- (a) Proponents should provide a detailed description of the strategy and arrangements for the construction, maintenance and operation of the proposed network infrastructure and services, including:

2.8.1 Roll-out strategies

- (a) The proposed strategy for the detailed planning and management of the roll-out of the NBN infrastructure, including any consultation arrangement, planning approvals, infrastructure survey and data collection requirements, the proposed approach to offer services at greenfields sites, and monitoring arrangements. The Proposal should also set out the reporting arrangements for monitoring of coverage during the roll-out. Proponents should clearly detail the methodology for the measurement and reporting of the percentage of homes and businesses that have access to services from the NBN. The methodology should make use of publicly available, reputable datasets such as those published by PSMA Australia and the Australian Bureau of Statistics;

2.8.2 Construction

- (a) The arrangements for the construction of the network infrastructure and the implementation of services, including the technical experience and expertise of the Proponent and of any third party suppliers, labour resources (with necessary skills), labour force training, any requirement for the use of existing infrastructure and, where relevant, arrangements for gaining access to that infrastructure, and site acquisitions involved;

2.8.3 Equipment and systems

- (a) Equipment availability and any time required to develop or modify equipment, operational and business support systems, strategy for sourcing equipment and technologies (e.g. multi vendor, development); and

2.8.4 Maintenance and operation

- (a) Arrangements for the life of the project agreement for maintenance, operation and support of the network infrastructure and the services (including where wholesale services are provided to a third party), and network and service upgrades (including the arrangements for determining upgrades).

2.9 Proponent risk

- (a) Proponents should attach as **Annexure K** a detailed risk analysis, in accordance with Australian Standard AS4360: Risk Management or equivalent standard, including a risk management plan that sets out in detail the technical, operational, financial and legal risks associated with the Proponents' NBN Proposal and the actions proposed to manage the risks. This risk analysis should be consistent with the Commonwealth's indicative risk allocation table set out in section 5.1 of this Schedule 2. For each risk, Proponents should discuss its source, the potential impact and the likelihood of it occurring. List the risks in order of assessed significance and describe the strategies that will be used to manage each risk.

2.10 Commonwealth risk

- (a) Proponents should provide a detailed description of:
- (i) any risks for the Commonwealth arising in connection with the construction and operation of the NBN under the Proponent's Proposal; and
 - (ii) proposed measures (including, if appropriate, through access or other proposed pricing and/or proposed legislative and other regulatory measures) to address legal, non-performance and other risks for the Commonwealth.

2.11 Third party risk

- (a) Proponents should provide details of the Proponent's proposed arrangements, if any, (including proposed legislative and regulatory measures) to address any appropriate claims for compensation to parties who may be affected by the roll-out and operation of the NBN.

Section 3 - Legislative and other regulatory issues

Criterion 3: The nature, scope and impact of any legislative and/or regulatory changes that are necessary to facilitate the Proposal.

- (a) In reference to criterion 3, Proponents should describe the nature, scope and impact of any legislative or other regulatory changes that are necessary to facilitate the Proposal, compliance with remaining legislative or other regulatory requirements and the Proposal's impact on the achievement of other communications policy objectives.

3.1 Legislative and other regulatory changes

- (a) Proponents should provide a detailed description of, and justification for, any proposed changes (including their duration and any mechanism for regulatory review) to existing telecommunications legislation or other regulatory measures considered necessary to facilitate the roll-out of the NBN infrastructure, to provide regulatory certainty and to enable a return on investment in the network infrastructure.
- (b) In doing so, Proponents should provide specific details of the amendments sought to existing legislation (including to particular sections of legislation and any new legislative provisions proposed. Proponents should address in detail why each proposed change to the existing legislative and other regulatory arrangements is reasonable and necessary, and why it could not be narrower to achieve substantially the same purpose, and the extent to which the proposed changes:
- (i) promote or reduce competition in the provision of communications services;
 - (ii) impact on efficient investment;
 - (iii) impact on consumers; and
 - (iv) effect the achievement of other communications policy objectives.
- (c) Proponents should specify any changes arising from their proposed arrangements that affect, but are not limited to, the following areas of regulation:
- (i) proposed universal service arrangements;
 - (ii) consumer safeguards; and
 - (iii) network reliability regulation.

Supporting information

*Proponents should attach as **Annexure L** a detailed description of new and/or altered legislative provisions they are seeking, on a provision-by-provision basis.*

3.2 Compliance with legislative and other regulatory requirement

- (a) Proponents should provide a detailed description of how the Proposal will affect the Proponent's ability to comply with telecommunications legislation and other regulatory measures that the Proponent has not sought to have changed. Particular regard should be given to compliance with law enforcement, national security, emergency service and consumer safeguard requirements.
- (b) Proponents should provide a detailed description of how the Proposal will affect the ability of other market participants to comply with telecommunications legislation and other regulatory measures that the Proponent has not sought to have changed.

Particular regard should be given to compliance with law enforcement, national security, emergency service and consumer safeguard requirements.

- (c) Proponents should provide a detailed description of what measures, if any, are proposed to mitigate the impact of the Proposal on the Proponent or other market participants' ability to comply with their legislative and regulatory obligations. Particular regard should be given to compliance with law enforcement, national security, emergency service and consumer safeguard requirements.

3.3 Binding commitments

- (a) Proponents should specify what binding commitments they would give in relation to implementation of their Proposals, and under what conditions.
- (b) See also section 4.4 of this Schedule 2 for information sought on financial and performance guarantees.

3.4 Assurances sought by the Proponent

- (a) Proponents should specify what assurances, if any, in addition to legislative or other regulatory changes, the Proponent may wish to seek from the Australian Government to provide it with the level of certainty it requires to roll-out, maintain and operate the NBN.

Section 4 – Funding arrangements

Criterion 2: Capacity of the Proponent to roll-out, maintain and operate the NBN.

Criterion 4: The cost to the Commonwealth of the Proposal.

4.1 Funding vehicle

- (a) Proponents should describe the proposed vehicle for the financing of the NBN by the Proponent (or its financiers) and the Commonwealth, noting the Government's objective to achieve a return on investment and its preparedness to consider a full range of funding options.
- (b) The funding arrangement and vehicle should identify the commercial and non-commercial elements of the NBN Proposal (as a proportion of the total NBN).
- (c) The Proponent should also describe how the proposed vehicle would be managed and whether the Commonwealth would be represented.
- (d) The Proponent should give an outline of the rights to be acquired by the Commonwealth and the liabilities and obligations to be imposed on the Commonwealth as a result of the implementation of its Proposal. Any such terms should address (without limitation) details of any specific exclusions or limitations of liability (including liability caps) proposed by the Proponent.
- (e) The Proponent should describe the relationship between the proposed rate of return and proposed funding vehicle.

4.2 Funding and financial assumptions

- (a) Proponents should:
 - (i) describe the amount of funding being provided by the Proponent (with a detailed explanation of how these funds will be deployed on the project);
 - (ii) describe the amount of Commonwealth funding or contribution required with detailed explanation of how these Commonwealth funds will be deployed by the project, and whether the funding would be provided for commercial or non-commercial services and timeframes for deployment of the funds;
 - (iii) clearly identify the timeframes for the deployment of the Commonwealth funds and whether Commonwealth support for the NBN needs to be provided on an ongoing basis, noting a total Government investment of up to \$4.7 billion;
 - (iv) separately identify the non-commercial funding component for each additional component of NBN population coverage. A commercial and non-commercial funding breakdown for the NBN based on the following percentages of network coverage: 80%, 85% and 90% and in single percentage increments above 90% should be provided;
 - (v) provide a detailed breakdown and justification of the pre- and post-tax return on investment, including where different returns are sought for different parts of the project;
 - (vi) specify the rate of return to the Commonwealth, including justification of the proposed rate; whether the rate of return to the Commonwealth is guaranteed; and timeframes for the return to be realised;

- (iii) taxation assumptions, including the assessability and deductibility of income and expenditure, GST and other taxes;
- (iv) any material macroeconomic assumptions such as inflation and exchange rates, and financing assumptions;
- (v) projected revenue assumptions including the wholesale/retail ratio (if relevant); and
- (vi) market parameters, including demand growth (all network services) and market share (all network services).

4.5 Certainty of funding

- (a) The Commonwealth will consider the degree of certainty of the funding proposal as evidenced by the level of commitment demonstrated and approvals obtained by all providers of debt, equity and other forms of finance. Proponents should provide the following information where relevant.

4.5.1 Equity Financing requirements

- (a) In respect of each class of equity or quasi equity (shareholder provided mezzanine debt / subordinated debt) Proponents should set out:
 - (i) The identity of the investors, including any arrangers or underwriters where relevant.
 - (ii) Amounts and type of capital to be provided by each of the investors and the timing of these injections, including details of any applicable conditions precedent to be satisfied.
 - (iii) Minimum return requirement for each class of risk capital and the basis of any Internal Rate of Return calculations. Proponents should provide full copies of all shareholder agreements / term sheets.
 - (iv) Terms and conditions of subscription, including anticipated returns and if appropriate requisite Internal Rate of Return.
 - (v) Terms and any other agreements between the investors in their capacity as investors in the project company.
 - (vi) Copies of any shareholder agreement / term sheet.
 - (vii) The dividend rights attaching to the shares and the assumed dividend payment stream.
 - (viii) Dividend policy.
 - (ix) Voting rights attaching to the subscription.
 - (x) Any other rights attaching to the shares.
 - (xi) The extent to which funds are committed.
 - (xii) The length of time the funds will remain in the project vehicle.
 - (xiii) If the total amount of equity finance (including quasi equity) is expected to change through the life of the project, then details of the amount and the phasing of the changes along with the relevant trigger events for such occurrences.

- (xiv) Where applicable, Proponents should reference the above information to the financial model.

4.5.2 Equity Commitment letters

- (a) A letter of support from each equity investor confirming their respective capacity to issue and/or underwrite the required funding. The level of commitment should be demonstrated by providing the following documents:
 - (i) Board minutes of the project company shareholders committing to subscribe equity.
 - (ii) Letters from all equity investors committing to subscribe for equity, or from the financial advisers, proposed underwriters or stockbrokers of third party investors.
- (b) In the event that funds are to be sourced from third parties, the Commonwealth reserves the right to contact the nominated parties and confirm their willingness to provide the proposed funding.

4.5.3 Debt Financing Requirements

- (a) Proponents should note that the Commonwealth anticipates that each Proponent will ensure that they secure competitive debt funding facilities (whether senior, mezzanine or subordinated) that provide cost effective solutions to the Commonwealth and support a value for money outcome for the project and that all debt financing arrangements will provide funding certainty at the date the Proposal is submitted.
- (b) Notwithstanding the time period between the date of Closing Time and the date of contract signature, each Proponent should demonstrate that the proposed terms of all financings procured, including senior debt facilities, are competitive.
- (c) Proponents should note that the Commonwealth wishes to ensure that all costs associated with debt finance are transparent. Therefore, in respect of each lender, underwriter or arranger, of each class of debt (including bond finance, use of swaps or interest rate hedging investments and any bank, or other guarantees, or credit enhancement structures) issued for the project, the Proponent should provide the following information:
 - (i) The identity of the provider, arranger and / or underwriters should bond financing or similar be proposed, and the identity of credit-support providers.
 - (ii) The identity any of security trustees and any other parties participating in debt facility arrangements and fee proposals, where applicable.
 - (iii) Amounts to be provided by each lender.
 - (iv) Terms and conditions attaching to the loans (term sheet / collateral deed) including details of all required ratios (for example required minimum and average coverage ratios) and reserve accounts, and nature, i.e. seniority and ranking of the debt.
 - (v) Drawdown schedule.
 - (vi) Repayment schedule and final maturity.
 - (vii) Security required.

- (viii) Interest rates (on swaps, other proposed hedging instruments, base rates etc), including details of relevant reference rates and pricing methodologies to be used in setting financing rates, hedges, etc.
- (ix) Any debt service or maintenance reserve requirements.
- (x) Any covenants, including but not limited to financial ratio covenants, including proposed calculation methodologies and methods of application (e.g. historical and/or forecast) and any cash flow retention requirements.
- (xi) Proposed amortisation schedule and terms under which amortisation may be accelerated.
- (xii) Trigger events or covenants causing “cash flow” lock up for the SPV and/or partial pre-payment to lenders, including details of release triggers from such restrictions by lenders.
- (xiii) Any proposed provisions relating to cure periods for short-term breaches or below forecast financial performance.
- (xiv) Any “step-in operator rights” by financiers for material covenant breaches and failure to cure.
- (xv) Any early termination rights or rights to break or repricing inherent with the proposed contracts.
- (xvi) Default clauses, including cure and remedy periods for any major default of non-performance.
- (xvii) Conditions precedent.
- (xviii) Confirmation that all relevant funds are fully committed, subject only to acceptance of the Proposals.
- (xix) Extent to which funds and hedging are committed, the tenor, the timing and the amount thereof, including any early termination or rights to break or repricing inherent with the proposed contracts.
- (xx) Credit margins, fees and similar charges, including any repricing or renegotiation event triggers and levels (such as credit rating events, etc).
- (xxi) Average life of debt.
- (xxii) Working capital requirements and evidence as to how this is to be financed.
- (xxiii) Rights of assignment of debt.

4.5.4 Debt commitment letters

- (a) Proponents should produce the strongest form of commitment possible. This should include a confirmation that financiers have reviewed the financial model outputs and the Proponent’s legal commentary and are satisfied therewith. The level of commitment should be demonstrated by providing the following documents:
 - (i) Evidence of credit committee approvals for all forms of funding proposed.
 - (ii) A letter from the Proponent’s financial advisors stating that the proposed funding structure is realistic and achievable and that the financing proposals are sufficient to enable the project company to meet its obligations.

- (b) Proponents should indicate the level of completeness of financier due diligence undertaken and the extent of due diligence that will be carried out prior to the appointment of a preferred Proponent, including the overall scope and timetable of financier due diligence.
- (c) This information should be provided for each financier and approved by (i.e. signed by) each respective financier.

4.6 Financial and performance guarantees

- (a) Proponents should provide details of the financial and/or performance guarantees, for the life of the project from the nominated start date, proposed to support the Proposal, including justification of the approach proposed.

4.7 Transparency and reporting mechanisms

- (a) Proponents should provide a summary of the proposed mechanisms for reporting and ensuring transparency. Proponents should note that the Commonwealth will require a high standard of accountability and reporting on the use of Commonwealth funding.

Supporting information

*Attach as **Annexure N** any further information to demonstrate the nature and availability of funding.*

Section 5 – Proponent’s contract terms and conditions

Criterion 5: The acceptability to the Commonwealth of the contract terms and conditions proposed by the Proponent and the extent to which the Proposal departs from the Commonwealth’s notified commercial terms (if any).

5.1 Outline of Proponent’s contract terms and conditions and risk allocation

(a) Proponents should attach as **Annexure O** an outline of their proposed contract terms and conditions in relation to the NBN project.

(b) Proponents should attach as **Annexure P** their response to the Commonwealth’s indicative risk allocation table below.

Commonwealth’s indicative risk allocation table		
No.	Risk description	Allocation
CONSTRUCTION PHASE		
1.	NETWORK INFORMATION – Risk that existing network information provided to Proponents is inadequate or unreliable	Contractor
2.	SITE ACCESS – Risk that some required infrastructure sites cannot be accessed as expected by the Contractor	Contractor
3.	ACCESS TO EXISTING NETWORK INFRASTRUCTURE – Risk that access to existing network infrastructure is delayed or constrained	Shared
4.	GREENFIELD SITES – Risk that greenfields developments do not proceed as planned or agreement cannot be reached with developers on acceptable terms for deployment of broadband infrastructure	Contractor
5.	GOVERNMENT APPROVAL (OTHER THAN PLANNING APPROVALS) – Risk that contract execution is delayed due to extended contract negotiations / Government approval processes / any required legislation	Government
6.	PLANNING APPROVAL – Risk that State and Local Government planning approvals are delayed or impose unexpected conditions	Contractor
7.	AVAILABILITY OF FINANCE – Risk that debt and/or equity finance is not available	Contractor

Commonwealth's indicative risk allocation table		
No.	Risk description	Allocation
	on acceptable terms	
8.	INTEREST RATES – Risk of variability in interest rates	Contractor
9.	ESCALATION – Risk that construction cost estimates change between contract execution and completion of the NBN	Contractor
10.	DESIGN – Risk that the network design proves incapable of delivering the functional outcomes required	Contractor
11.	CONTAMINATION – Risk that existing sites are contaminated and must be cleaned up prior to network infrastructure works	Contractor
12.	SUBSURFACE INFRASTRUCTURE – Risk that existing subsurface infrastructure will need to be repaired or replaced	Contractor
13.	DISRUPTION OF EXISTING SERVICES – Risk that construction of the NBN will disrupt existing service providers	Contractor
14.	ESTIMATING ERROR – Risk that capital costs are under-estimated	Contractor
15.	SHORTAGE OF LABOUR OR MATERIALS – Risk of delay or cost increases due to shortages of materials or suitably qualified labour or unexpectedly long order times for major / specialised equipment	Contractor
16.	EXCHANGE RATE – Risk of adverse movements in the cost of equipment and materials purchased overseas	Contractor
17.	INSURANCE – Risk that construction insurance cannot be obtained on acceptable terms	Contractor
18.	FIT FOR PURPOSE – Risk that infrastructure is not fit for purpose upon completion	Contractor
19.	POPULATION COVERAGE – Risk that coverage outcomes are below those	Contractor

Commonwealth's indicative risk allocation table		
No.	Risk description	Allocation
	agreed when measured using the data sets and methodology agreed for measuring coverage results	
20.	CONTRACTOR DEFAULT – Risk that the contract is terminated prior to completion of the network due to contractor default	Contractor
21.	SUB-CONTRACTOR DEFAULT – Risk of default of a major sub-contractor	Contractor
22.	OH&S – Risk of a breach in OH&S standards during the construction phase	Contractor
23.	INDUSTRIAL ACTION / COMMUNITY PROTEST – Risk of strikes, industrial action or civil commotion causing delay and cost to construction of the network	Contractor
24.	OPERATIONS	
25.	DEMAND RISK – Risk that customer take-up is less than expected at planned service levels, prices and conditions	Contractor
26.	COMPETITION – Risk that expected market is captured by new or existing competitor networks	Contractor
27.	MAINTENANCE – Risk that the cost of network maintenance is under-estimated	Contractor
28.	CAPACITY – Risk that the network cannot meet excess, unforeseen demand at required uplink / downlink speeds	Contractor
29.	BACKHAUL CAPACITY – Risk that domestic and international backhaul infrastructure cannot meet demand at required coverage and uplink / downlink speeds	Contractor
30.	UPGRADEABILITY – Risk that the network cannot be upgraded to provide enhanced downlink uplink speeds within timeframes as agreed	Contractor
31.	CUSTOMER REQUIREMENTS – Risk that the network infrastructure does not have sufficient flexibility to respond to changing customer requirements,	Contractor

Commonwealth's indicative risk allocation table		
No.	Risk description	Allocation
	population patterns and growth	
32.	TECHNOLOGICAL OBSOLESCENCE – Risk that the passive and active network infrastructure does not have sufficient flexibility to respond to competing technologies	Contractor
33.	DISRUPTION OF EXISTING SERVICES – Risk that operation of the NBN will negatively impact on existing service providers	Contractor
34.	PERFORMANCE – Risk that the network is subject to performance failures exceeding agreed levels	Contractor
35.	SECURITY – Risk that the network does not provide a capability for lawful interception	Contractor
36.	SECURITY – Risk that unauthorised access to the network is not detected and/or prevented	Contractor
37.	SECURITY – Risk of compromise of security and privacy of consumer data travelling over the network	Contractor
38.	CUSTOMER EQUIPMENT FUNCTIONALITY– Risk that customer equipment does not perform to anticipated levels	Contractor
39.	MIGRATION – Risk of migration of customers from existing infrastructure to the NBN	Contractor
40.	COMPLIANCE WITH STANDARDS – Risk that hardware and software does not comply with national and international standards	Contractor
41.	INTEROPERABILITY – Risk that the NBN is not interoperable with other carrier networks	Contractor
42.	NETWORK ACCESS – Risk that access to the NBN by competing providers is limited by quality of services (e.g. fault repair, access to buildings, etc)	Contractor

Commonwealth's indicative risk allocation table		
No.	Risk description	Allocation
43.	NETWORK ACCESS – Risk that access to existing networks is limited by access terms and conditions or quality of services	Contractor
44.	NETWORK ACCESS – Risk that access seekers will not be able to differentiate their services (speed, quality, contention ratios) to downstream markets	Contractor
45.	REGULATION – Risk that revenues are less than expected under the prevailing access regime and any price controls	Contractor
46.	REGULATION – Risk of a breach of prevailing regulatory controls	Contractor
47.	INSURANCE – Risk that operating insurance cannot be obtained on acceptable terms	Contractor
48.	FORCE MAJEURE – Risk that certain events (e.g. terrorism) may delay or prevent achievement of milestones	Shared
49.	REFINANCING – Risk that any planned refinancing consequent upon Government contribution cannot be obtained on acceptable terms	Contractor
50.	CHANGE IN LAW – Risk that changes in Federal or State laws change the anticipated construction or operating costs (other than taxation or project-specific Federal laws)	Contractor
51.	TAXATION – Risk of unexpected tax impacts, including changes in tax law	Contractor
52.	CHANGE IN STANDARDS – Risk that national and international standards for hardware and software change the anticipated construction or operating costs	Contractor
53.	CHANGE IN OWNERSHIP – Risk that a change in the ownership or control of the contractor results in a weakening of its financial standing or other detriment to the project	Shared

Section 6 – SME participation plans

Criterion 1: The extent to which the Proposal meets the Commonwealth’s objectives for the NBN project.

6.1 SME participation plans

- (a) In reference to clause 10.9.1.1 of the RFP, in response to this heading, Proponents must set out the nature of opportunities to be provided to Australian and New Zealand SMEs to supply goods and services to the project.
- (b) Proponents should set out details of the proposed communications strategy that will provide for the early identification of opportunities for Australian and New Zealand SMEs and the effective transfer of information on opportunities for Australian and New Zealand SMEs through all tiers of supply.
- (c) Proponents should also set out opportunities for Australian and New Zealand SMEs to be involved in all stages of the project (i.e., through design, procurement, construction, operation and whole-of-life support).
- (d) Proponents should describe opportunities for longer-term participation by Australian and New Zealand SMEs on a commercial basis. This could include:
 - (i) supporting training and skills development initiatives;
 - (ii) undertaking research and development and encouraging innovation as appropriate;
 - (iii) facilitating strategic partnering and networking to develop critical mass;
 - (iv) supporting the integration of Australian and New Zealand SMEs into global supply chains; and
 - (v) encouraging Australian and New Zealand SME suppliers to adopt world’s best practice standards and, where appropriate, to gain international standard accreditation.

Supporting information

*Attach as **Annexure Q** a plan for providing opportunities to Australian and New Zealand SMEs.*

This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of # Australia.

EXECUTED as a deed.

Section 8 – Form of Proponent Confidentiality Deed Poll

[Proponent]

in favour of

Commonwealth of Australia

Proponent Confidentiality Deed Poll

Date

Parties

[] (Proponent)

Background

- A The Commonwealth intends to carry out the Project through the RFP Process.
 - B The Proponent wishes to participate in the RFP Process, and the Commonwealth intends to disclose to the Recipients certain information on condition that the Recipients enter into this deed poll to protect the confidential nature of that information.
 - C The Recipients have agreed that the Confidential Information is provided to them on the terms of this deed poll and that they will not use or disclose the Confidential Information except as expressly provided in this deed poll.
-

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this deed poll the following terms shall have the following meanings:

Adviser means any firm or company who directly or indirectly provides advice to the Proponent or a Consortium Member in connection with the Project.

Associate means, in relation to a person, any Related Body Corporate of that person or any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of that person or that Related Body Corporate and:

- (a) in the case of the Commonwealth, includes any Governmental Agency and any officer, employee, agent, contractor, consultant, nominee, licensee, expert advisory panel or adviser of the Commonwealth or of any Governmental Agency, but excludes any party to this deed poll (other than the Commonwealth); and
- (b) in the case of the Proponent, includes each Consortium Member and each Adviser, and any Related Body Corporate, officer, employee, agent, contractor, consultant, nominee or licensee of the Proponent, of each Consortium Member and of each Adviser (other than the Commonwealth or any of its Associates).

Business Day means a day that is not a Saturday, Sunday or public holiday in Canberra.

Claim includes any claim, proceeding, cause of action, action, demand or suit (including by way of contribution or indemnity).

Confidential Information means all information in whatever form or medium which is obtained by or on behalf of the Proponent or any of its Associates from the Commonwealth, or any of its Associates relating in any way to the Project or the RFP Process that:

- (a) is by its nature confidential;
- (b) is designated as confidential; or
- (c) the other party knows or ought know is confidential;

but does not include information:

- (d) which is or becomes public knowledge other than by breach of this deed poll or any obligation to maintain confidentiality of Confidential Information; or
- (e) that has been independently developed or acquired as established by written evidence.

Consortium means the Proponent, each Consortium Member and each of their Associates involved in the Project.

Consortium Member means each person who is participating in the RFP Process with the Proponent, as a member of a consortium.

Deed of Acknowledgement means a deed in the form contained in Schedule 2.

Governmental Agency means a government or a governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a stock exchange.

Intellectual Property Rights includes all rights in the nature of intellectual property or industrial property (within the meaning of the term 'industrial property' in Article 1 of the Paris Convention for the Protection of Industrial Property) and includes:

- (a) copyright;
- (b) trade and service marks, whether registered or unregistered, and any copyright material substituting in those trade marks;
- (c) designs (whether registered or unregistered);
- (d) patents and inventions (whether patented, and whether patentable or not);
- (e) internet domain names;
- (f) trade names and business names;
- (g) confidential information and trade secrets;
- (h) any application or the right to apply for registration of any of the rights referred to in paragraphs (a) to (g) of this definition;
- (i) any letters patent or registration in respect of any of the rights referred to in paragraphs (a) to (g) of this definition; and

- (j) any of the rights referred to in paragraphs (a) to (g) of this definition, whether registered, registrable or not.

Liability means any debt, obligation, cost (including legal costs), expense, loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Loss includes any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, ascertained unascertained, actual, prospective or contingent or any fine or penalty.

Permitted Purpose means the evaluation by the Proponent, the Consortium Members and their Associates of whether and if so on what terms to submit a RFP Proposal.

Project means the project known as the National Broadband Network Project, for the roll-out and operation of a National Broadband Network for Australia.

Recipient means:

- (a) the Proponent;
- (b) each Consortium Member; and
- (c) any Associate of the Proponent or of any Consortium Member who is required to provide a Deed of Acknowledgement under clause 2.2(b).

Related Body Corporate has the meaning given to it in the Corporations Act 2001 (Cth).

Request for Proposals or **RFP** means the request for proposals for the Project issued by the Commonwealth on or around 11 April 2008.

RFP Process means the processes for the implementation of the Project commencing from the issue of the Request for Proposals, being the processes described in general terms in the RFP.

RFP Proposal means the one or more responses to be submitted by, or on behalf of, the Proponent in response to the RFP.

1.2 Construction

In this deed poll:

- (a) any schedule to it is an integral part of it and any reference to this deed poll includes a reference to that schedule;
- (b) the headings in it are used for ease of reference only and are not to be taken into account for the purposes of construing it;
- (c) any reference to it or any other agreement, contract, document or instrument includes any variation or replacement of any of them;
- (d) any references to any clause, schedule and provision are references to that clause, schedule and provision contained in it;
- (e) the words “including”, “include” and “includes” are to be construed without limitation; and
- (f) a reference to a director, officer, employee, agent, contractor or consultant of a Recipient includes a reference to a past, terminated or retired director, officer, employee, agent, contractor or consultant.

2 Use and disclosure of Confidential Information by the Recipient

2.1 Confidentiality and Restricted Use of Confidential Information

Each Recipient agrees that it will:

- (a) not use the Confidential Information for any purpose whatsoever except the Permitted Purpose;
- (b) keep confidential all Confidential Information (subject to disclosure permitted under clause 2.2 or clause 4.1); and
- (c) not copy or duplicate (or allow the copying or duplication of) any Confidential Information except for the purposes of the disclosure of Confidential Information provided for in clause 2.2 or clause 4.1.

2.2 Disclosure of Confidential Information to Consortium

Each Recipient may only disclose the Confidential Information or any part of it to any other person if:

- (a) the disclosure is necessary solely for the Permitted Purpose;
- (b) the person to whom Confidential Information is to be disclosed:
 - (i) is a party to this deed poll; or
 - (ii) has duly executed and delivered to the Commonwealth, prior to the disclosure to it of any Confidential Information, a Deed of Acknowledgement; and
- (c) in the case of disclosure of any Confidential Information to any officer or employee of the Recipient, the relevant Recipient has complied with clause 2.3 prior to any such disclosure.

2.3 Management of Officers and Employees

- (a) Each Recipient agrees that it is responsible to ensure that its officers and employees keep confidential all Confidential Information and are bound by the same requirements in relation to disclosure and use of Confidential Information as are imposed on the Recipients under this deed poll, and if it discloses Confidential Information to any of its officers or employees, then it will:
 - (i) impress upon that person the private and confidential nature of the Confidential Information; and
 - (ii) establish procedures and processes to ensure that the Confidential Information is and remains confidential, and that the obligations of the Recipient under this deed poll are therefore complied with (as for example by requiring execution of confidentiality undertakings in its favour).
- (b) Each Recipient agrees to take enforcement action against any of its officers or employees to whom it has disclosed Confidential Information in the event that that person breaches any of the requirements of this deed poll.

- (c) Each Recipient agrees to indemnify the Commonwealth and the Associates of the Commonwealth for any Loss, Liability or Claim arising out of breach of any of the requirements of this deed poll by any of the officers or employees of that Recipient.
- (d) At the request of the Commonwealth from time to time, a Recipient will provide such documents, records and other information that the Commonwealth reasonably requires to evidence compliance by the Recipient with the requirements of paragraphs (a) and (b).

2.4 Recipient obligations

Each Recipient must, at its own expense (or at the expense the Consortium):

- (a) notify the Commonwealth immediately if it becomes aware of a suspected or actual breach of this deed poll or any unauthorised disclosure, copying or use of Confidential Information;
- (b) enforce each Deed of Acknowledgement, if so required by the Commonwealth;
- (c) immediately take all reasonable steps to prevent or stop any such suspected or actual breach or unauthorised disclosure or use; and
- (d) provide all reasonable assistance requested by the Commonwealth from time to time for the enforcement of any Deed of Acknowledgement (including commencing, conducting and settling enforcement proceedings against any Recipient involved in such breach or unauthorised disclosure or use).

3 Security and control of Confidential Information

3.1 Security

Each Recipient must, at its own expense (or at the expense of the Consortium):

- (a) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised by this deed poll;
- (b) subject to the terms of this deed poll, keep Confidential Information under each Recipient's control; and
- (c) establish and maintain effective and auditable procedures for ensuring compliance with its obligations under this deed poll.

3.2 Assistance in proceedings

In addition to the indemnity under clause 2.3(c) and the undertakings in clause 2.4(c) and (d), each Recipient must, at its own expense (or at the expense of the Consortium) provide all reasonable assistance requested by the Commonwealth in relation to any proceedings the Commonwealth may take against any person for unauthorised use, copying or disclosure of Confidential Information, or failure to comply with the provisions of this deed poll or any Deed of Acknowledgement.

3.3 Commonwealth's right to terminate holding of Confidential Information

The Commonwealth may terminate the entitlement of a Recipient to hold Confidential Information at any time with immediate effect, by giving written notice to that effect to the Recipient.

3.4 Consequences of right to terminate holding of Confidential Information

On termination under clause 3.3 of the entitlement of a Recipient to hold Confidential Information or upon completion of the Permitted Purpose, without limitation to the other rights of the Commonwealth, the right of each Recipient to use that Confidential Information ceases and each Recipient must immediately procure that all Confidential Information is, at the Commonwealth's option, either:

- (a) returned to the Commonwealth;
- (b) destroyed and that destruction certified to the Commonwealth;
- (c) destroyed and a representative of the Commonwealth is permitted to witness that destruction; or
- (d) dealt with in some other manner nominated by the Commonwealth and acceptable to the Recipient (acting reasonably).

3.5 Effect of such termination on accrued rights

Termination of the entitlement to hold Confidential Information pursuant to this deed poll does not affect any accrued rights or remedies the Commonwealth may have.

3.6 Additional obligations unaffected

The obligations of each Recipient under this deed poll are in addition (and without prejudice) to any other obligations of confidence or with respect to probity which the Recipient may have whether at law, in equity, by statute or otherwise.

4 Approved Disclosure

4.1 Non application of restriction

The provisions of clauses 2.1(b) and (c) and clause 2.2 do not apply to:

- (a) the disclosure of information for which the Commonwealth has given its prior written consent;
- (b) information after (but only to the extent that) it becomes generally available to the public other than because of a breach of any provision of this deed poll or a Deed of Acknowledgement; or
- (c) the disclosure of information to the extent necessary to comply with any applicable law or legally binding order of any Governmental Agency.

The burden of proving that information falls within clause 4.1 rests with the Recipient.

4.2 Notice and opportunity to challenge

- (a) Prior to any use or disclosure in reliance on clause 4.1, the Recipient must immediately give notice to the Commonwealth with full details of the circumstances of the proposed use or disclosure and of the relevant information proposed to be used or disclosed.
- (b) The Recipient must give the Commonwealth a reasonable opportunity to challenge in a court of law or other appropriate forum whether such proposed use or disclosure is in accordance with clause 4.1.
- (c) In addition, if the Recipient is or anticipates being legally compelled to disclose Confidential Information, the Recipient must, at the direction of the Commonwealth:
 - (i) assist and take such steps as will permit the Commonwealth to oppose or restrict that disclosure;
 - (ii) take all lawful measures available to oppose or restrict that disclosure; and
 - (iii) if that disclosure is legally required, make disclosure on terms which preserve the confidentiality of the Confidential Information to the maximum extent possible,

and the Commonwealth will pay the reasonable costs of the relevant Recipient in acting in accordance with such a direction from the Commonwealth.

5 Disclaimer and exclusion of liability

5.1 Confidential Information

Each Recipient acknowledges and agrees that:

- (a) the Confidential Information, and all Intellectual Property Rights in the Confidential Information, will remain the property of the Commonwealth or any Associates of the Commonwealth (as the case may be);
- (b) the Confidential Information does not constitute an invitation, offer or recommendation by or on behalf of the Commonwealth or any Associates of the Commonwealth;
- (c) the purpose of the Confidential Information is to provide the Consortium with information to use for the Permitted Purpose;
- (d) the Confidential Information does not purport to contain all of the information that the Consortium requires for the purposes of preparing and lodging a RFP Proposal and does not purport to be prepared having regard to the business objectives, financial situation or particular needs of any person within the Consortium;
- (e) neither the Commonwealth, any Associates of the Commonwealth nor any other person acting on behalf of or associated with any of them has verified, or has any obligation to verify, the accuracy, reliability or completeness of the Confidential Information;

- (f) neither the Commonwealth, any Associates of the Commonwealth nor any other person acting on behalf of or associated with any of them has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Confidential Information;
- (g) each person within the Consortium must not rely in any way on the skill or judgement of the Commonwealth, any Associates of the Commonwealth or any person acting on behalf of or associated with any of them in deciding to lodge a RFP Proposal;
- (h) each person within the Consortium will rely absolutely on its own opinion and professional advice based upon its own independent analysis, assessment, investigation and appraisal in deciding to lodge a RFP Proposal;
- (i) it will not in any way rely upon:
 - (i) the Confidential Information; or
 - (ii) a failure by the Commonwealth or any Associates of the Commonwealth to provide any information to the Recipient or its Associates;
- (j) each person within the Consortium is required to do, and will be deemed to have done, everything that would have been expected of a prudent, competent and experienced contractor in:
 - (i) assessing the risks that it is assuming in connection with the Project; and
 - (ii) ensuring that the Project price tendered by the Consortium contains allowances to protect it against any of these risks, including all those things, activities and tasks set out in the RFP;
- (k) each person within the Consortium will carry out all relevant investigations, make their own review and evaluation, and examine and acquaint themselves in respect of:
 - (i) all aspects of the Project;
 - (ii) the contents, correctness, sufficiency and suitability of the Confidential Information;
 - (iii) all information which is relevant to the risks, contingencies and other circumstances related to the Project which could affect their decision to lodge a RFP Proposal,
 - (iv) without reliance on the Commonwealth or any Associates of the Commonwealth;
- (l) no statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by the Commonwealth, any Associates of the Commonwealth or any person acting on behalf of or associated with any of them in any prior or subsequent negotiation, arrangement, understanding or agreement other than the executed contractual documents is of any effect except to the extent expressly set out or incorporated in this deed poll;
- (m) the Confidential Information is not all documentation relevant to the Project, nor is it the only reference material that may be relevant;

- (n) neither the Commonwealth nor any Associates of the Commonwealth is under any obligation to:
 - (i) notify the Recipient or any of its Associates or provide any further information to the Proponent or any of its Associates if it becomes aware of any inaccuracy, incompleteness or change in the whole or any part of the Confidential Information; or
 - (ii) update the whole or any part of the Confidential Information,
 - (iii) although the Commonwealth or any Associates of the Commonwealth may do so at their sole discretion;
- (o) the Confidential Information may contain reports procured by or on behalf of the Commonwealth in relation to the Project. The Commonwealth may (or may not) procure that the Proponent has the benefit of any such report, and if so that fact will not alter the acknowledgements and agreements given by the Recipient under this clause 5, including in relation to Confidential Information the subject of the reports novated to the Proponent.
- (p) the acknowledgements and agreements under this clause 5 are in addition to and, to the extent not inconsistent, do not replace the terms and conditions already agreed to or accepted by each Recipient when receiving the Confidential Information.

5.2 Commonwealth Not Liable

- (a) To the extent permitted by law, each Recipient expressly waives and releases any right which it may have (whether at the date of this deed poll or otherwise) to bring any action or make any Claim against the Commonwealth or any of the Associates of the Commonwealth arising out of the provision of the Confidential Information or the disclosure or non-disclosure of any information relating to the Project. Each Recipient indemnifies the Commonwealth and each of the Associates of the Commonwealth against any Loss or Liability arising from such action or Claim brought by a Recipient or an Associate of a Recipient against the Commonwealth.
- (b) Each Recipient indemnifies the Commonwealth and the Associates of the Commonwealth against any Liability or Loss to any person by way of indemnity against, or contribution to, the Liability or Loss of that person to a Recipient, arising out of, or in respect of, or in connection with any Claim, Loss or Liability referred to in clause 5.2(a).

5.3 No enquiry

Each Recipient acknowledges and agrees that the Confidential Information has been or will be given in good faith and that the Commonwealth has no knowledge that the Confidential Information is misleading or deceptive. Each Recipient agrees, however, that the Commonwealth and each of the Associates of the Commonwealth have no obligation to make enquiries to verify that Confidential Information.

5.4 Liability unaffected

The Liability and responsibility of each Recipient to the Commonwealth and the Commonwealth's rights under this deed poll or otherwise according to law, will not be affected by any of the matters referred to in this clause 5.

6 Damages not an adequate remedy

Each Recipient acknowledges and agrees that:

- (a) damages may not be an adequate remedy for the Commonwealth for any failure by any Recipient to comply with this deed poll, and if there is a breach or suspected breach of this deed poll by a Recipient, the Commonwealth may seek and is entitled to injunctive or declaratory relief or orders for specific performance; but
- (b) without limitation to clause 5, damages will be an adequate remedy for any Recipient for any failure by the Commonwealth to comply with this deed poll.

7 Notices

7.1 General

Subject to clause 7.2, any notice, demand, consent or other communication pursuant to this deed poll (**Notice**) must be, if in writing, signed by or on behalf of the sender, addressed to the intended recipient and:

- (a) delivered;
- (b) sent by prepaid mail (or if posted to another country, by registered airmail); or
- (c) transmitted by facsimile,

to that recipient's address or facsimile number specified in Schedule 1 or the last address or facsimile number notified by that recipient to the sender.

7.2 Notices sent by email

A Notice may also be sent by email if the Notice is:

- (a) authorised by the sender in accordance with a procedure agreed between the parties; and
- (b) sent to the email address specified in Schedule 1 (or the email address last notified by the intended recipient to the sender).

7.3 Time of receipt

A Notice given to a person in accordance with this clause 7 is treated as having been given and received:

- (a) in the case of delivery in person, when delivered to the intended recipient or their premises;

- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); and
- (c) in the case of delivery by facsimile, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination facsimile number or name of the intended recipient and indicating that the transmission has been made without error; or
- (d) in the case of delivery by email, the first to occur of:
 - (i) receipt by the sender of any email acknowledgement from the intended recipient's information system showing that the Notice has been delivered to the email address of that recipient;
 - (ii) the time that the Notice enters an information system which is under the control of the intended recipient; and
 - (iii) the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent on or later than 4.00 pm (local time) on a Business Day, the Notice will be taken to have been duly given or made at the start of business on the next Business Day in that place.

8 Survival of deed

The obligations to the Commonwealth pursuant to this deed poll shall exist prior to, and shall survive the termination or completion of the Project and shall continue until such time as the Confidential Information becomes public knowledge other than by breach of this deed poll.

9 Assignment and termination

9.1 No assignment without consent

The Proponent and each Consortium Member must not assign or otherwise transfer any of its rights arising under this deed poll without the written consent of the Commonwealth.

9.2 Confidentiality obligations continue after assignment or termination

The obligations of confidentiality under this deed poll continue to apply after assignment, transfer or termination of the right to hold Confidential Information under this deed poll.

9.3 New parties

The Proponent and each Consortium Member must ensure that no party who is not a Consortium Member at the date of this deed poll becomes a member of the Consortium without the prior consent of the Commonwealth and, if that consent is

given, without that party, acceding to this deed poll in such manner, form and substance as the Commonwealth requires.

9.4 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this deed poll. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

9.5 Contra proferentem

In the interpretation of this deed poll, no rule of construction applies to the disadvantage of one party on the basis that it put forward this deed poll or any part of it.

9.6 Entire Agreement

This Deed and the RFP will contain the entire agreement of the parties with respect to the matters contemplated in this deed poll. There are no undertakings, agreements, warranties or representations (express or implied), with respect to the matters contemplated by this deed poll except for those referred to in them.

9.7 Successors

This Deed shall be binding upon each of the Proponent and each Consortium Member and its successors and assigns and shall ensure to the benefit of the Commonwealth, its successors and assigns.

9.8 Severability of provisions

If any provision of this deed poll is held invalid, unenforceable or illegal for any reason, this deed poll shall remain otherwise in full force and effect apart from such provision which shall be deemed deleted.

9.9 Indemnity held on trust

Each of the Proponents and each Consortium Member declares and acknowledges that:

- (a) each indemnity and right referred to in this deed poll in favour of any of the Associates of the Commonwealth is held on trust by the Commonwealth for the benefit of any of the Associates of the Commonwealth from the date of this deed poll; and
- (b) the consent of the Associates of the Commonwealth referred to in clause 9.9(a) will not be required for any amendment to, or waiver of rights under, this deed poll.

9.10 Governing law and jurisdiction

This deed poll is governed by the laws applicable in the Australian Capital Territory and the Recipient submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the Australian Capital Territory.

Executed as a Deed Poll

[Insert appropriate execution clause]

Schedule 1

Notice Details

Commonwealth

Commonwealth's Address

38 Sydney Ave

Forrest ACT 2602

Commonwealth's Telephone No

02 6271 1579

Commonwealth's Facsimile No

02 6271 1850

Commonwealth's Email

nationalbroadbandnetwork@dbcde.gov.au

Proponent

Proponent's Registered Address

Proponent's Representative

Proponent's Postal Address

Proponent's Telephone No

Proponent's Facsimile No

Proponent's Email

Schedule 2

Deed of Acknowledgement

In favour of: Commonwealth of Australia

And of: **[Proponent]**

In this deed poll of Acknowledgement, any word, expression, reference or term used which is defined in the deed poll entered into by **[Proponent]** in favour of the Commonwealth in connection with the National Broadband Network Project (**Proponent Confidentiality Deed Poll**) and is not specifically defined in this deed poll of Acknowledgement will, unless the context requires otherwise, have in this deed poll of Acknowledgement, the same meaning as in the Proponent Confidentiality Deed Poll.

[insert company/firm name and ABN] ("Incoming Recipient") is a Consortium Member or an Associate of **[Proponent]** and the Incoming Recipient acknowledges that information relating to the Project is confidential and that strict confidentiality requirements apply to that information.

The Incoming Recipient acknowledges that it is bound by the provisions of the Proponent Confidentiality Deed Poll, including the undertakings and covenants given in clauses 2, 3, 4, 5 and 6 of the Proponent Confidentiality Deed Poll, as if named as a party to the Proponent Confidentiality Deed Poll:

- (a) as a "Consortium Member" where the Incoming Recipient is a Consortium Member; and
- (b) as a "Recipient" in all other cases.

Dated

Executed as a Deed Poll

[Insert appropriate execution clause]